Calendar No. 854

100TH CONGRESS *2d Session*	SENATE	REPORT 100-440

FEDERAL AVIATION ADMINISTRATION INDEPENDENT ESTABLISHMENT ACT OF 1988

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1600

AUGUST 2 (legislative day, AUGUST 1), 1988.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
19-010 WASHINGTON : 1988

5263-17

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AUGUST 2 (legislative day, AUGUST 1), 1988.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

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MINORITY VIEWS

[To accompany S. 1600]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1600) to enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, would separate the Federal Aviation Administration (FAA) from the Department of Transportation (DOT) and create an independent Federal agency. All functions currently administered by the FAA would be retained by the new FAA, except for the promotion of civil aviation, which would be transferred to DOT. The bill also directs the Department of Justice to investigate business practices of the domestic airlines and requires the FAA Administrator to undertake a rulemaking to consider the need to change the existing slot allocation process at the four High Density Traffic Airports.

Background and Needs

In 1966, the FAA was placed in the newly-created DOT. The rationale was to have a single voice speak for transportation policy at the cabinet level. Twenty-two years have passed and the relationship envisioned between the FAA and the DOT is not the relationship that has prevailed. The oversight exercised by the Secretary of Transportation has gone beyond providing policy guidance.

Instead, DOT has participated extensively in technical FAA decisions, has initiated actions with far-reaching effects on aviation safety and security, and has fine-tuned many operational decisions made by FAA technical experts. The hiring and selection of senior staff is subject to approval of DOT. Complex procurement of technical systems have been delayed, reviewed, and modified by non-technical policy or political people at DOT. The FAA budget is balanced against other Departmental priorities and whittled down to accommodate other modes. Positions and funding have been withdrawn from the FAA to provide resources for the Department's new programs. These practices have led to confusion over priorities, significant budgetary and funding deficiencies, shifting signals on strategy, complications in the chain of command, and conflicting program directions.

In addition to the frustrations caused by DOT's micromanagement, the FAA has suffered from frequent changes of leadership and direction. The average tenure of FAA Administrators has been less than 3 years. For example, there have been three Administrators since 1981. The Deputy Administrator's position has been unfilled for lengthy periods of time, creating a situation where the head of a highly technical agency has operated with no second-in-command. When the two top jobs at FAA are filled, the occupants are frequently both new to the job and to the agency. There has been little institutional memory and even less continuity.

Furthermore, since deregulation, the aviation industry has undergone dramatic growth and the demands on the FAA have been great. Rebuilding of the controller work force following the 1981 strike, rapidly expanding traffic levels, upgrading and expansion of the aviation inspector staff, and implementation of the FAA's National Airspace System Plan (NAS Plan) have posed serious challenges for the FAA. The agency has struggled to meet these challenges, but has had only limited success, due in part to the combined effect and retarding influence of the Federal budget, personnel, and procurement systems.

To address these concerns, the reported bill provides for an independent FAA headed by an Administrator with a 7-year fixed term. In addition, this legislation gives the Administrator flexibility in certain circumstances to attract and retain personnel in crucial areas of the national airspace system, and authorizes the Administrator to proceed with limited regulatory reform of the Federal procurement process.

Legislative History

On August 6, 1987, Senator Ford introduced S. 1600, legislation separating the FAA from DOT, establishing it as an independent agency headed by an Administrator with a fixed 7-year term. Upon

its introduction, the legislation was cosponsored by Senators Kassebaum, Byrd, and Lautenberg.

The Aviation Subcommittee, chaired by Senator Ford, held 4 days of hearings on the need for long-term structural changes to improve the ability of the FAA to ensure aviation safety. On September 10, 1987, the subcommittee heard testimony from three former FAA Administrators and a former DOT Secretary. At the second hearing, on October 7, 1987, witnesses included the Chairman of the National Transportation Safety Board, James Burnett, and representatives from the general aviation and commercial airline industries. On December 17, 1987, the subcommittee heard from aviation labor and general aviation industry representatives. At the fourth hearing, held on March 23, 1988, the subcommittee received testimony from DOT Secretary James Burnley, the CEO of a major airline, and a witness representing a coalition of 12 aviation industry organizations.

On June 28, 1988, the Commerce Committee met in open executive session to consider the bill. An amendment in the nature of a substitute to S. 1600 was offered to the Committee by Senator Ford. Senator McCain then offered an amendment requiring the FAA to initiate a rulemaking relating to the allocation of airport slots, which was approved without objection. The Committee then ordered S. 1600, as amended, reported by a vote of 14 to 4.

Summary of Major Provisions

As reported, S. 1600 establishes the FAA as an independent Executive agency, removing it from DOT. All authority for improving and enhancing aviation safety and security transfers to the independent FAA. Authority to encourage and foster the development of civil aeronautics and air commerce transfers from the FAA to the Secretary of Transportation.

The Administrator of the FAA will be appointed by the President, by and with the advice and consent of the Senate, to a 7-year term. The Administrator will be paid at the Executive Schedule level I pay rate. A Deputy Administrator for Operations and Administration, who will be appointed by the Administrator from the career service, is created, as is a Deputy Administrator for Safety, having oversight of FAA safety programs, who will be appointed by the President, by and with the advice and consent of the Senate, from a list submitted by the Administrator. Both Deputy Administrators will be paid at the Executive Schedule level II pay rate.

Employees of the independent FAA will remain in the civil service. To address critical staffing shortages in remote or high-cost locations, the FAA Administrator is authorized to grant an incentive allowance of up to 10 percent of basic pay if needed to ensure safe and efficient operation of major facilities. In extraordinary circumstances, and after notifying Congressional committees, the Administrator is authorized to grant an incentive allowance in excess of 10 percent of basic pay.

The independent FAA will be subject to all existing Federal statutes and regulations governing procurement and acquisitions. Within that framework, the Administrator is directed to establish "clear and concise policies" for procurement, acquisition, research

and development, and logisitics. The Administrator is authorized to issue a rule, which would be an exception to the Federal Acquisition Regulations, to limit competition for the acquisition of systems essential to the safety of national airspace, including situations under which the Administrator (1) may restrict competition to companies that have met specific qualifications; (2) may negotiate with a single contractor after receiving proposals; or (3) may acquire from a sole source contractor. The Administrator is also authorized to appoint a board of contract appeals with exclusive jurisdiction to resolve disputes and protests that may result from contracts awarded under this rule.

The bill establishes a five-member Adivsory Committee to provide advice and counsel to the Administrator on issues which affect or are affected by the independent FAA. The Advisory Committee, which will cease to exist 1 year after it comes into existence, will be chaired by the Secretary of Transportation and otherwise comprised of individuals appointed by the President from lists submitted by the Committee on Commerce, Science, and Transportation in the Senate and the Committee on Public Works and Transportation in the House of Representatives.

S. 1600, as reported, authorizes the appropriation of funds needed to establish the FAA as an independent agency. It also authorizes the appropriation of funds for fiscal years 1990 and 1991 for FAA Operations, as well as FAA Facilities and Equipment, and Research, Engineering and Development for fiscal year 1991.

The bill, as reported, directs the Attorney General, in consultation with Secretary of Transportation and Federal Trade Commission, to investigate anticompetitive business practices of the domestic airline industry, focusing on monopoly hub airports and monopoly service to small and medium-sized communities. S. 1600, as reported, also directs the FAA Administrator to initiate a rulemaking to consider the need for changes to the existing "Buy-Sell" rule, relating to the allocation and transfer of landing and takeoff rights, or "slots," at the four High Density Traffic Airports.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 22, 1988.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1600, the Federal Aviation Administration Independent Establishment Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1600.

2. Bill title: Federal Aviation Administration Independent Establishment Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 28, 1988.

4. Bill purpose: S. 1600 would establish the Federal Aviation Administration (FAA) as an independent agency, removing it from the Department of Transportation (DOT). All functions (except for the promotion of civil aviation) would be transferred from the current FAA to the independent FAA. The bill would authorize appropriations for FAA operations and headquarters administration for 1990 and 1991 and would also authorize appropriations for 1991 for programs funded by the Airport and Airway Trust Fund. In addition, S. 1600 would:

Authorize the Administrator of the FAA to grant incentive allowances of up to 10 percent of basic pay where critical staffing shortages exist or in remote or high cost locations, and incentive allowances of greater than 10 percent of basic pay where extraordinary circumstances exist.

Establish a five-member Advisory Committee for a period of one year to provide advice and counsel to the Administrator.

Establish an Inspector General for the FAA.

Require the Attorney General, in consultation with the Secretary of Transportation and the Federal Trade Commission, to investigate the business practices of the domestic airline industry.

Require the Administrator to institute a rulemaking proceeding to consider the need for changes to the existing regulation concerning the allocation and transfer of slots at the four slot-controlled airports.

5. Estimated cost to the Federal Government: S. 1600 authorizes appropriations for FAA operations and headquarters administration and also authorizes appropriations from the Airport and Airway Trust Fund for other programs. The table below summarizes the total costs of the bill.

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorization levels:					
FAA operations/HQ administration		3,988	4,188		
Facilities and equipment			1,990		
Research, engineering and development			250		
Aviation weather services			30		
Total Authorizations		3,988	6,458		
Estimated outlays		3,669	4,474	888	566

In addition to the above authorizations, costs for the Attorney General's investigation into the business practices of the domestic airline industry would be approximately $1 million in 1989 and 1990.

The costs of this bill fall within budget function 400.

Basis of estimate: CBO assumes that all funds authorized by the bill for fiscal years 1990 and 1991 will be appropriated prior to the beginning of each fiscal year. It is also assumed that the authorizations in Section 22(b) are for FAA operations and headquarters administration. The estimated outlays are based on historical spending rates.

Based on information from DOT, CBO estimates that the cost to the federal government to establish the FAA as an independent agency and remove it from DOT (including the cost to establish an Inspector General for the FAA) would not be significant. The use of incentive allowances would add to pay costs, but any such costs could vary significantly, depending on the extent to which the Administrator utilizes such authority; any such costs would fall within the authorized appropriation for FAA operations. Costs for other provisions of the bill, including the Advisory Committees and the rulemaking proceeding, would not be significant.

6. Financing mechanism: S. 1600 authorizes funding to be provided in subsequent appropriation bills. This cost estimate presents the budget authority that is authorized to be appropriated and the estimated outlays that would be generated if the Congress chooses to fully fund the authorized amounts.

7. Estimated cost to State and local Governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mitchell Rosenfeld.

11. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The legislation would separate the FAA entirely from DOT and establish an independent Federal agency to control and regulate the national airspace. The persons covered would be the approximately 48,600 FAA employees, plus any additional employees in the Office of the Secretary of Transportation who currently oversee the functions administered by the FAA.

ECONOMIC IMPACT

Section 22 of the bill, as reported, authorizes an amount of $3.988 billion for FY 1990 and $4.188 billion for FY 1991 for the FAA Operations appropriations account. Under current law, FAA operations and maintenance expenses are provided under a permanent authorization. These funding levels are similar to those that will be requested by the FAA without this legislation. Additionally, actual

outlays are contingent upon the amounts made available through annual appropriation Acts.

This section also amends section 506 of the Airport and Airway Improvement Act of 1982 (P.L. 97-248), as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (P.L. 100-223), to fund the Facilities and Equipment appropriation account, the Research, Engineering and Development appropriation account, and the reimbursement to the National Oceanic and Atmospheric Administration for an additional year, through fiscal year 1991. The amounts authorized, respectively, are $1.990 billion, $250 million and $30 million; however, actual outlays are contingent upon the amounts made available through annual appropriation Acts.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Section 13 of the bill directs the Administrator to undertake a rulemaking to limit competition for certain critical procurements. By streamlining the procurement and acquisition process, this rulemaking could significantly reduce the paperwork required for certain FAA procurements. The Committee expects there to be no other significant paperwork burden.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

Section 1 states that the short title of the bill is the "Federal Aviation Administration Independent Establishment Act of 1988".

SECTION 2.—FINDINGS

Section 2 of the bill contains Congressional findings related to the unprecedented growth of the civil aviation industry, and the FAA's attempts to ensure aviation safety during this period of rapid expansion, albeit under an outdated organizational structure. Further, these findings state the need for a more streamlined FAA with greater autonomy, consistent leadership, and essential management tools needed to fulfill its mission of ensuring aviation safety. Additional findings recognize the need for increased emphasis on research and development, as well as the importance of the highly successful relationship and cooperative efforts between the FAA and the Department of Defense.

SECTION 3.—DEFINITIONS

Section 3 defines "Administration" as the independent Federal Aviation Administration and "Administrator" as the Administrator of the independent FAA.

SECTION 4.—ESTABLISHMENT

Section 4 establishes the FAA as an independent Executive agency, which succeeds the FAA existing within DOT on the day before the effective date set forth in section 27(a).

The primary mission of the FAA is to improve and enhance aviation safety. That mission is not one which lends itself to actions and decisions which are politically motivated. However, the Committee believes that decisions related to air safety are being made with an ever-increasing eye toward politics, rather than merit. This has happened as the Secretary of Transportation and DOT staff, who often have little or no aviation experience, have interjected themselves into the day-to-day decision-making process of the FAA.

Earlier this year, the President's Commission on Aviation Safety concluded that "the present safety regulatory structure designed to ensure aviation safety is inadequate to deal with future growth and technological change." To address this concern, the Commission recommended that the FAA be transferred from DOT and be established as an independent agency. Additionally, through extensive Aviation Subcommittee hearings, it has become apparent that structural changes are needed at the FAA and that an independent FAA is supported by former FAA Administrators and virtually every segment of the aviation industry.

The Committee agrees that a structural change must be made to the FAA to guarantee its long-term ability to improve and enhance aviation safety. The many layers of review imposed by the Secretary and Departmental staff do not enhance aviation safety. Re-establishing the FAA as an independent agency under the guidance of the President—as it was prior to the creation of the DOT in 1966—will provide needed insulation from political influences. It will bring the authority for decisions on aviation safety in line with responsibility, and renew the agency's morale to enable it to better meet the challenges of our air transportation system in the 21st Century.

SECTION 5.—OFFICERS

Section 5 establishes the officers of the independent FAA, including the Administrator, who shall be appointed by the President to a 7-year term, by and with advice and consent of the Senate. The Administrator is empowered to carry out, under the supervision and direction of the President, all functions transferred to the Administrator by the bill, and shall have the authority and control over all personnel, programs, and activities of the FAA. The Administrator may be removed by the President for neglect of duty or malfeasance in office. Compensation for the Administrator is set at the rate prescribed for level I of the Executive Schedule pay rates.

A fixed term for the FAA Administrator of 7 years is designed to address serious problems that have plagued the FAA since its creation, that being high turnover of political appointees that head the agency and a corresponding lack of continuity in policy planning and implementation. Since 1966, when the FAA was moved into DOT, the average tenure of an FAA Administrator has been slightly less than 3 years. This has generally not been long enough for the individuals appointed to that position to secure command of

the massive FAA bureaucracy, formulate a cohesive policy for improving aviation safety, and ensure agency implementation. Additionally, by establishing the Administrator's compensation at the level I Executive Schedule pay rate, the Committee believes the FAA will be able to attract the type of individual needed to effectively manage such a large, complex, and decentralized organization.

Under this section, two Deputy Administrators are established. The Deputy Administrator for Operations and Administration, who shall be appointed by the Administrator from the career service, shall act and perform the functions of the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant. The Deputy Administrator for Safety shall be appointed by the President, by and with the advice and consent of the Senate, from a list of five individuals provided by the Administrator. The Deputy Administrator for Safety shall be an individual with technical qualifications, professional standing, and demonstrated knowledge in the fields of aviation safety, regulation, or the operation of the air traffic control system. The Deputy Administrator for Safety is responsible for exercising oversight over the safety programs of the FAA, including regulatory and enforcement activities for the enhancement of safety. Whenever the Administrator, or in the Administrator's place, the Deputy Administrator for Operations and Administration, is absent or unable to serve, or those positions are vacant, the Deputy Administrator for Safety shall act for and perform the functions of the Administrator. Compensation for the Deputy Administrator for Operations and Administration and the Deputy Administrator for Safety is set at the rate prescribed for level II of the Executive Schedule pay rates.

By creating the position of Deputy Administrator for Safety, the Committee is affirming the paramount importance of aviation safety in the FAA. Unlike the Deputy Administrator for Operations and Administration, who will have the responsibility for working with the Administrator to make the FAA run on a day-to-day basis, the Deputy Administrator for Safety will be responsible for ensuring that the FAA is discharging its regulatory and operational responsibilities safely. The position created in this legislation is similar, although not identical, to the "Safety Czar" recommended by the President's Aviation Safety Commission, in that the complete attention of the Deputy Administrator for Safety will be on the safety implications of FAA regulatory and enforcement activities.

There shall be a maximum of eight Associate Administrators, who shall be appointed by the Administrator and shall perform such functions as the Administrator shall prescribe. The Administrator is also directed to designate the order in which the Associate Administrators shall act for and perform the functions of the Administrator when the Administrator, or in that individual's place, the Deputy Administrator for Operations and Administration and the Deputy Administrator for Safety are absent or unable to serve, or when the offices of Administrator or both Deputy Administrators are vacant. Compensation for an Associate Administrator is set at the rate prescribed for level IV in the Executive Schedule

pay rates. The Committee believes that a limit on the number of Associate Administrators is desirable to maintain a well-balanced hierarchy within the independent FAA. A recent reorganization at the FAA established four Executive Directors to oversee the Associate Administrators and other senior managers. This legislation neither requires nor prohibits creation of these positions. However, if it is determined that Executive Director positions are necessary in the independent FAA, additional legislation is likely to be required to provide appropriate Executive level status for the Executive Directors.

Also established in the independent FAA is the position of Chief Counsel, who shall be appointed by the Administrator and shall act as the chief legal officer for all legal matters arising from the conduct of the functions of the FAA. The Chief Counsel shall be compensated at the rate prescribed for level IV of the Executive Schedule pay rates.

The position of Inspector General, appointed in accordance with the Inspector General Act of 1978, is established under this section. The Inspector General shall also be compensated at the rate prescribed for level IV of the Executive Schedule pay rates.

Each of the officers referred to in this section must be a citizen of the United States, and the Administrator must be a civilian. No officer of the FAA may have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

SECTION 6.—POWERS

Section 6 states that the Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the independent FAA. In carrying out the functions of the independent FAA, the Administrator shall be governed by all applicable statutes, including the policy standards set forth in the Federal Aviation Act of 1958.

Nothing in this legislation shall be construed to limit the authority of the Administrator to promote safety by establishing and administering accident prevention programs, encouraging airport development, educating the public on the adoption of worldwide safety standards. By including this provision, the Committee intends to make clear that the independent FAA will continue to be responsible for these functions, including the award of grants under the Airport Improvement Program, as well as the promotion of safety programs both in the United States and worldwide.

Decisions of the Administrator made pursuant to the exercise of the functions enumerated in the Federal Aviation Act of 1958 shall be administratively final, and appeals, as currently authorized by law, shall be taken directly to the National Transportation Safety Board or to any court of competent jurisdiction, as appropriate.

SECTION 7.—TRANSFERS AND INCIDENTAL PROVISIONS

Section 7 transfers authority for certain activities from the existing FAA in DOT to the independent Federal Aviation Administration. Included in the transfer to the independent FAA are all functions vested by law in the existing FAA, and all functions vested by

law in the Secretary of Transportation or DOT which are administered through the FAA. The exception to this is the authority currently provided the Administrator under section 305 of the Federal Aviation Act of 1958 to encourage and foster the development of civil aeronautics and air commerce, which will be transferred to the Secretary of Transportation. In addition, authority over the economic aspects of international aviation, consumer protection, and the Essential Air Service program will remain with the Secretary of Transportation, consistent with current law.

The Committee believes that the mission of the independent FAA must be clarified, making clear that aviation safety is the FAA's foremost responsibility. This is accomplished in this legislation by transferring the authority for encouraging and fostering the development of civil aviation from the FAA to the Secretary of Transportation. Years ago, the fledging civil aviation industry needed the support of Federal regulators to ensure its survival. Today, however, this multi-billion dollar industry represents a major segment of the nation's economy and hardly needs the Administrator to act as its promoter. Additionally, and more importantly, this transfer of authority will remove the potential for concerns over a conflict in interest between the goals in the promotion of aviation and regulation of safety. To ensure that this responsibility is given adequate attention by the Secretary, the Committee believes that the staff and resources associated with these promotional activities should be transferred from the FAA to the Secretary of Transportation.

Section 7 also transfers to the independent FAA as much of the personnel, property, records, funds, accounts, and unexpended balances of appropriations, allocations, and other moneys of the DOT as are employed, used, held, available, or to be made available in connection with the functions transferred to it.

The personnel transferred to the independent FAA shall not suffer a reduction in classification or compensation, except that after the transfer, those personnel shall be subject to changes in classification or compensation in the same manner, to the same extent, and according to the same procedure, as provided by current law.

SECTION 8.—DEVELOPMENT PLAN

Section 8 requires the Administrator to prepare a 3-year development plan for the independent FAA, outlining goals and objectives for personnel, technology, and regulation in such areas as air traffic control, aviation standards, airport security, airport and airway development, and research and development. The Administrator is required to submit this plan not later than January 1, 1990, and every 3 years thereafter, to this Committee and the Committee on Public Works and Transportation in the House of Representatives. The Committee believes that such a development plan will help ensure accountability, as it will provide a baseline for oversight of the independent FAA against which the Congress and others can measure its progress on safety initiatives and other actions.

SECTION 9.—RULES; REGULATIONS

Section 9 authorizes the Administrator of the independent FAA to promulgate, issue, rescind, and amend rules and regulations, as governed by the provisions of chapter 5 of title 5, United States Code.

This section also requires the Administrator of the independent FAA to consider the comments and recommendations submitted by the Secretary of Transportation in response to any notice of proposed rulemaking issued by the Administrator. The comments raised by the Secretary must be addressed by the Administrator during the course of the rulemaking, and the Administrator must provide an explanation of any decision not to adopt a recommendation made by the Secretary. The Committee believes that this will strengthen the traditional rulemaking process by ensuring that the independent FAA formally addresses the comments of the Secretary of Transportation, who may bring to the rulemaking process a different perspective and focus of concern.

SECTION 10.—DELEGATION

Section 10 authorizes the Administrator to delegate any function to any officer or employee of the independent FAA as the Administrator sees fit to designate, along with such successive redelegations as may be necessary or appropriate. No delegation of functions by the Administrator under this section or under any other provision of this legislation shall relieve the Administrator of responsibility for the administration of those functions.

SECTION 11.—PERSONNEL AND SERVICES

Section 11 authorizes the Administrator to appoint, transfer, and fix the compensation of officers and employees, including attorneys, of the independent FAA, as may be necessary to carry out the functions of the Administrator and the independent FAA. Officers and employees of the independent FAA shall be appointed in accordance with the civil service laws and compensated in accordance with title 5, United States Code.

This section also authorizes the Administrator to hire experts and consultants in accordance with section 3109 of title 5, United States Code, at pay rates consistent with general pay schedule rates. The Administrator is authorized to pay transportation expenses and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5, United States Code. The Administrator is also authorized to utilize, on a reimbursable basis, the services of personnel of any Federal agency.

The Administrator is authorized under this section to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, which permits such services only for emergencies involving safety of life or property unless otherwise authorized by law, provided such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis. Any individual who provides such volunteer services shall not be considered a Federal employee for any purpose other than those established under chapter 81 of title 5, United States Code, relating to compensation for work injuries and

28 U.S.C. chapter 171 relating to tort claims. This exception enables to volunteers to receive compensation for injuries related to the performance of their services in the same manner as Federal employees for their work injuries. Under this provision, victims injured as a result of a volunteer's Federal activities are enabled to sue the Federal Government. In so doing, this allows the individual to be protected from individual responsibility if the action causing the injury were within the scope of that individual's Federal service.

This section also authorizes the Administrator to accept volunteer services in accordance with the provisions of section 3111 of title 5, United States Code, pertaining to student volunteers, and authorizes the Administrator to provide for incidental expenses, including transportation, lodging, and subsistence for such volunteers.

Section 11 also authorizes the Administrator to grant to any employee of the independent FAA an incentive allowance of not to exceed 10 percent of the basic pay of the employee if necessary to provide safe and efficient service in major facilities which the Administrator finds (1) are critical to the national airspace system; (2) have been chronically understaffed; or (3) are in remote or high cost locations. The Administrator is authorized to grant an incentive allowance in excess of 10 percent if extraordinary circumstances exist. Under this exception, the Administrator is directed to transmit a written explanation of the proposed allowance and the reasons therefor to this Committee and the Committee on Public Works and Transportation of the House of Representatives. The Administrator may not provide the proposed allowance until 60 days has elapsed from transmission of this written explanation.

The FAA operates a network of air traffic control and air navigation facilities in all 50 States and around the world. A large number of these facilities are difficult to staff because of the cost of living differences, the inaccessibility of the location, or the complexity of the job requirements compared to other jobs at the same pay level. For example, many terminal radar approach control facilities in major metropolitan areas or en route air traffic control centers located near high cost urban centers have chronically been understaffed. There is no incentive for a controller to move to some of these areas, even with a higher grade, if housing costs are prohibitive, if schools are poor, or if the climate is inclement. Unfortunately, the Federal personnel structure does not offer incentives to attract personnel to these locations. The result is staffing shortages and increased overtime—factors with a possible impact on air safety. The Committee believes that the incentive allowance provided in this legislation for attracting experienced employees to high cost or remote areas will greatly help to resolve this problem. This 10 percent allowance is designed to be applied on top of other pay incentives currently provided to certain FAA employee gorups. Also, to address extraordinary circumstances which may necessitate additional incentives, the present bill authorizes the FAA to apply financial incentives in excess of the 10 percent allowance.

The Administrator is also directed under this section to study ways to compensate or otherwise provide additional incentives to encourage employees to seek, accept, and remain in supervisory

and managerial positions, including compensation opportunities that are at least as substantial as those available to other employees of comparable grade within the General Schedule. The Administrator is directed to report to Congress on the results of such study, including any recommendations for legislative action, not later than 6 months after the effective date of this section. The Committee is concerned over the problems the FAA has had with attracting managers and supervisors, especially in the air traffic control work force. At the largest facilities, controllers hold the same grade level as supervisors. With the pay differentials and overtime pay available to them, controllers frequently draw a higher salary than their supervisors. Under these circumstances, there is little incentive for a controller to take a management job. The Committee believes an effective solution to this problem must be found in a timely fashion to ensure continued and complete rebuilding of the air traffic controller work force.

SECTION 12.—CONTRACTS

Section 12 authorizes the Administrator of the independent FAA to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the independent FAA. The Administrator may enter into such contracts, leases, agreements, and transactions with any Federal agency or any instrumentality of the United States, or with any State, territory, or possession, or their political subdivisions, or with any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate. The authority of the Administrator under this section is limited to amounts as provided in appropriation Acts.

SECTION 13.—PROCUREMENT

Section 13 directs the Administrator to establish clear and concise policies within the independent FAA for acquisition, including procurement, research and development, logistics, development testing, and contract administration. In establishing such policies, the Administrator is directed, to the maximum extent feasible, to adhere to principles aimed at: (1) assigning responsibility for accomplishing each procurement action to a specific person; (2) establishing clear command channels without overlapping responsibility between the individual assigned responsibility for each procurement action and the Administrator; (3) establishing a fundamental understanding concerning performance expectations, scheduling costs, and reporting requirements before work on a procurement action is begun; and (4) seeking to minimize redundant review and to take advantage of expedited procurement procedures to the extent such procedures are appropriate. This language is similar to that recommended by the President's Commission on Defense Management in 1986 and is designed to improve procurement and acquisition of those systems critical to the operation of the air traffic control system.

This section also directs the Administrator, not later than 6 months after the effective date of this section, to promulgate a rule

to limit competition for the acquisition of systems essential to the safety of the national airspace. This rule shall be an exception to the Federal Acquisition Regulations and shall include regulations specifying the conditions under which the Administrator (A) may restrict the competition to companies that have met specific qualifications; (B) may select a single contractor for negotiations after receiving proposals; and (C) may acquire from a sole source a subsystem or component of a system or an engineering or design service that is essential to make a system operational on schedule.

The FAA, like all other Federal agencies, is bound by the Federal Acquisition Regulations and all the Federal procurement statutes. While these requirements were designed to ensure fairness, open competition, and good value for the taxpayers, they also complicate the acquisition process considerably, and lead to delays in acquiring services or products. For example, the FAA was directed in the FY 1987 Supplemental Appropriations bill to procure and install 16 Instrument Landing Systems at specific high priority sites around the country in order to enhance aviation safety and increase airport capacity. Even though these systems are readily available, the FAA has indicated that installation is not expected until 1990 because of existing procurement constraints. Such examples only demonstrate how ill-suited the current process is in coping with current demands for airport and airway safety and capacity improvements.

The FAA has had to grapple with the Federal procurement process while trying to contract for state-of-the-art technology. The award of the design competition contract for the Advanced Automation System, which is the next generation controller work station and computer system, was delayed up to 6 months in order to consider an additional contractor who wanted to participate. That contractor was later disqualified as not technically able to handle the project. To insist on full and open competition for a nascent or complex technology which only a small number of contractors are capable of developing is not in the best interest of either the taxpayer or the aviation industry. The Committee believes the FAA should be able to obtain the best technical bids available from those capable of producing the item or service, and then should be allowed to negotiate with the most qualified contractor to assure the best product.

The Administrator is also authorized under this section to appoint an indepenent board of contract appeals within the FAA to resolve disputes arising from major system acquisitions essential to the safety of the national airspace, including information system contracts. The Federal process for resolving bid protests entails referral of the case to the General Accounting Office Board of Contract Appeals, or in the case of information systems contracts, to the Board of Contract Appeals at General Services Administration. A minimum of 90 days, and frequently much longer, is required for processing the protest. Some agencies, such as National Aeronautics and Space Administration, have their own board of appeals to resolve those contract issues involving their own systems. The Committee believes that the FAA should have a similar body to speed the resolution of contract protests of systems essential to the operation and modernization of the national airspace. This Board

must have exclusive jurisdiction and must include information systems contracts when they are part of the NAS Plan systems.

SECTION 14.—USE OF FACILITIES

Section 14 authorizes the Administrator to use, with or without reimbursement, and upon their consent, the services, equipment, personnel, and facilities of Federal agencies and other public and private agencies, as well as to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, personnel, and facilities. It direct the head of each Federal agency to cooperate fully with the Administrator of the independent FAA in making the services, equipment, personnel, and facilities of that agency available to the Administrator.

SECTION 15.—ACQUISITION AND MAINTENANCE OF PROPERTY

Section 15 authorizes the Administrator to acquire, construct, improve, repair, operate, and maintain (A) air traffic control facilities and equipment; (B) research and testing sites and facilities; and (C) such other real and personal property, or any interest therein within and outside the continental United States, as the Administrator considers necessary. The Administrator is authorized under this section to lease to others such real and personal property, and to provide and maintain eating and other necessary facilities for the welfare of employees of the indepenent FAA at its installations. Such authority is available only with respect to facilities which the Administrator determines cannot readily be assigned from similar Federal activities and are not otherwise available for assignment to the FAA by the General Services Administration. The Administrator's authority under this section to enter into contracts and leases is limited to amounts as are provided in appropriation Acts. This section also provides that title to any property or interest therein acquired shall lie with the United States.

SECTION 16.—FACILITIES AT REMOTE LOCATIONS

Section 16 authorizes the Administrator to provide, construct, or maintain for employees and their dependents stationed at remote locations, when necessary and not otherwise available: (1) emergency medical services and supplies; (2) food and other subsistence supplies; (3) meeting facilities; (4) audiovisual equipment, accessories, and supplies for recreation and training; (5) reimbursement for food, clothing, medicine, and other supplies furnished by FAA employees in emergencies for the temporary relief of distressed persons; (6) living and working quarters and facilities; and (7) transportation for school-age dependents of employees of the nearest appropriate educational facilities. Medical treatment and supplies and the furnishing of food and other subsistence supplies are required to be provided at prices determined by the Administrator to be reasonable.

Proceeds from reimbursement under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of work or services provided under this section, to repay or make advances to appropriations of funds which bear all or part of such cost, or to refund excess sums when neces-

sary. Such payments may be credited to a service or working fund otherwise established by law, and used under the law governing such funds if the fund is available for use by the Administrator for performing the work or services for which payment is received.

SECTION 17.—ADVISORY COMMITTEE

Section 17 establishes an advisory committee, known as the Federal Aviation Advisory Committee, to provide advice and counsel to the Administrator of the independent FAA on issues which affect or are affected by the operations of the FAA. The Advisory Committee shall cease to be in effect 1 year after the effective date of this section. The Administrator of the independent FAA shall make available to the Advisory Committee such staff, information, and administrative services and assistance as may be reasonably required to enable the Advisory Committee to carry out its responsibilities.

The Advisory Committee shall consist of five members, including the Secretary of Transportation, who shall serve as Chairman, two members appointed by the President from a list of individuals submitted by the Chairman and Ranking Minority Member of this Committee and two members appointed by the President from a list submitted by the Chairman and Ranking Minority Member of the Committee on Public Works and Transportation of the House of Representatives. Members of the Advisory Committee, including replacement members appointed to fill a vacancy, shall be appointed to serve until the Advisory Committee is terminated. Each member shall be paid actual travel expenses, and per diem in lieu of subsistence expenses, when away from his or her usual place of residence.

SECTION 18.—TRANSFER OF FUNDS FROM OTHER FEDERAL AGENCIES

Section 18 authorizes the Administrator to accept transfers from other Federal agencies of funds which are available to carry out those functions transferred by the bill or assigned by law after the date of enactment.

SECTION 19.—SEAL OF ADMINISTRATION

Section 19 directs the Administrator to make a seal of office for the independent FAA of such design as the Administrator shall approve. Judicial notice shall be taken of such seal.

SECTION 20.—STATUS OF ADMINISTRATION UNDER CERTAIN LAWS

Section 20 states that for purposes of section 551 of title 5 of the United States Code, the FAA is an agency. This is intended to make clear that the actions of the independent FAA will be governed by the normal administrative procedures originally established under the Administrative Procedures Act. For purposes of chapter 9 of such title, the Administration is an independent regulatory agency. This provision prevents a Presidential reorganization plan from abolishing the independent FAA, or transferring or consolidating it with another independent regulatory agency.

SECTION 21.—SAVINGS PROVISIONS

Section 21 states that all orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which are in effect at the time this section takes effect shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator, or other authorized officials, a court of competent jurisdiction, or by operation of law. This section also provides that the provisions of the bill shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this section takes effect, and that such proceedings and applications, to the extent they relate to the functions being transferred to the independent FAA, shall be continued. Nothing precludes the Administrator from discontinuing or modifying any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this legislation had not been enacted.

The provisions of the bill shall not affect suits commenced prior to the date this section takes effect. In all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this legislation had not been enacted.

The President may designate any officer, whose position is required to be appointed by and with the advice and consent of the Senate, and who was in that position immediately prior to the effective date of this section, to serve in an acting capacity in any office of the independent FAA that requires Senate advice and consent, until that office is filled. Any such person serving in an acting capacity shall receive compensation at the rates provided by this legislation for the respective office that is occupied.

SECTION 22.—AUTHORIZATION OF APPROPRIATIONS

Section 22 authorizes to be appropriated such sums as are necessary to carry out the purposes and provisions of the bill.

Also authorized under this section are funds for the Operations of the independent FAA, providing $3.988 billion for fiscal year 1990 and $4.188 billion for fiscal year 1991. To date, FAA operation and maintenance expenses have been provided for under a permanent authorization. The Committee believes that as public attention on aviation safety and the FAA has grown, increased attention is being focused on the administration of FAA responsibilities. The Committee therefore believes that an annual authorization for the FAA Operations account is needed to ensure that matters such as the operation and maintenance of the air traffic control system, administration of the aviation standards program, employee training and development programs, construction of facilities, and installation of equipment be justified to the authorizing committees. Such oversight will ensure adequate policy direction by the Congress to the FAA and, more importantly, increase the efficiency with which the FAA utilizes its resources.

This section also amends section 506 of the Airport and Airway Improvement Act of 1982, as amended by the 1987 reauthorization legislation, by authorizing funding for Airways Facilities and

Equipment, FAA Research, Engineering and Development, and Demonstrations, and reimbursement to the National Oceanic and Atmospheric Administration (NOAA) for fiscal year 1991. These programs are currently authorized through fiscal year 1990, with funds coming from the Airport and Airway Trust Fund.

Under this section, $1.990 billion is authorized for fiscal year 1991 for acquiring, establishing, and improving air navigation facilities. The vast majority of these funds will be used by the FAA to fund the continuation of the NAS Plan, a 10-year, multi-billion program to modernize and upgrade the air traffic control system. An amount of $250 million is authorized for fiscal year 1991 for Research, Engineering and Development, and Demonstrations, of which not less than $25 million is to be made available for airport capacity improvements. The current authorization for reimbursement to NOAA is also extended, providing $30 million in fiscal year 1991 for the cost of providing the FAA with weather reporting services.

SECTION 23.—LAWS AND REGULATIONS

Section 23 states that except to the extent otherwise provided, all laws, rules, and regulations in effect and applicable to the FAA within DOT on the date immediately preceding the effective date of this section, shall be applicable to the independent FAA on or after such effective date, until such law, rule, or regulation is repealed or otherwise modified or amended.

SECTION 24.—REPEALS

Section 24 repeals section 106 of title 49, United States Code, which establishes the FAA as an agency within DOT, as well as the qualifications for the Administrator and Deputy Administrator of the FAA in DOT.

SECTION 25.—AMENDMENT TO INSPECTOR GENERAL ACT OF 1978

Section 25 makes a conforming amendment to the Inspector General Act of 1978 by adding the FAA as an agency covered by that statute.

SECTION 26.—AMENDMENTS TO GENERAL SCHEDULE

Section 26 makes conforming amendments to title 5, United States Code, relating to the Executive Schedule pay rates of the officers of the independent FAA.

SECTION 27.—EFFECTIVE DATE

Section 27 provides that, with the exception of section 22 of the bill, relating to the authorization of appropriations, and section 29, relating to a rulemaking on airport slot allocation, the provisions of this Act shall take effect upon the expiration of the 180-day period following the date of enactment. Section 22 and section 29 become effective on the date of enactment of the bill.

SECTION 28.—INVESTIGATION OF AIRLINE BUSINESS PRACTICES

Section 28 directs the Attorney General, in consultation with the Secretary of Transportation and the Federal Trade Commission, to undertake an investigation of the domestic airline industry to determine whether the business practices of any air carrier are being conducted in a manner inconsistent with the policy set forth in the Declaration of Policy of the Federal Aviation Act of 1958. In carrying out this investigation, the Attorney General is directed to pay particular attention to (1) air transportation service provided to small and medium-sized cities which receive air service from only one carrier to and from a hub airport, and (2) air service at a hub airport at which more than 70 percent of all enplanements are attributable to one air carrier. This report, along with any recommendations for legislative or administrative action, is required to be submitted to this Committee and the Committee on Public Works and Transportation of the House of Representatives not later than 1 year after the effective date of this section.

The Committee is concerned that, after the recent wave of airline mergers and acquisitions, and the resulting industry-wide and airport-specific concentration, the airline industry is becoming increasingly less competitive. With increased concentration and the proliferation of the hub-and-spoke system, air travelers in many communities currently receive service from only one carrier.

Without the benefit of competition to ensure affordable quality air service, the Committee believes that the future of deregulation is severely threatened. Accordingly, the Committee directs the Attorney General to examine the business practices of the airline industry, focusing in particular on those situations where monopoly situations exist or tend to exist. The Committee has identified two situations which the Attorney General is directed to examine: small and medium-sized communities where service is being provided to and from a hub airport by only one carrier, and those hub airports which are dominated by a single air carrier. In these situations, and possibly others as well, the Committee is concerned that the airlines exercising monopoly power may have no incentive to provide quality service at fares comparable to those offered on routes receiving competitive service.

The Committee is also aware of allegations that other business practices conducted through the airline industry tend to allow excessive market domination, including the computer reservation systems (CRS's) used by the airlines and travel agents for issuing tickets to airline passengers.

SECTION 29.—RULEMAKING ON SLOT ALLOCATION

Section 29 directs the Administrator of the FAA within DOT, not later than 90 days after the date of enactment of the bill, to institute a rulemaking proceeding to consider the need for changes to the regulations in subpart S of part 93 of title 14, Code of Federal Regulations, concerning the allocation and transfer of landing and takeoff rights ("slots") held by air carriers and commuter operators at each of the four High Density Traffic Airports. Included among the issues that the FAA shall consider in this proceeding are the overall effect of the "Buy-Sell" regulation upon new entry, and upon the access of limited incumbents to additional slots at these four airports; the competitive implications of the use of such slots for providing services to and from hub airports and on monopoly routes; the effect of short-term leases of slots upon the ability of new entrants and limited incumbents to purchase slots at these airports; the effect of the use of air carrier slots by commuter operators upon entry by air carriers at these airports; and the variation in prices paid for slots since adoption of the Buy-Sell program. The Administrator is directed to complete action in this proceeding, including the promulgation of any resulting final regulations, not later than 270 days after the date of enactment of the bill.

A final rule on Slot Allocation and Transfer Methods at High Density Traffic Airports was issued by the FAA on December 20, 1985. The rule (called the "Buy-Sell" rule) transferred ownership of the operating rights or slots at the four high density airports (Washington National, O'Hare, JFK, and LaGuardia) from the Federal Government to the airlines using them at the time. After that, the airlines holding the slots had the right to buy, sell, lease, or trade the slots. The airlines which initially received the slots did not pay for them, yet have profited by their ownership.

The FAA provided for new entrants by withdrawing and reallocating 5 percent of the slots by lottery in early 1986. Since then, two additional lotteries have been held in which a number of slots were made available to new entrants. Yet, several of these new entrant carriers lack the resources to buy or lease slots to conduct necessary operations. The same is true of limited incumbents, carriers who possess a very small number of slots and lack the resources to compete against the major carriers for additional slots.

In 1986, the Senate overwhelmingly approved legislation repealing the "Buy-Sell" rule. However, that legislation was not enacted and the rule continues in effect today. The Committee believes that the current slot allocation method should be examined, since it may limit competition in our air transportation system. The administrator is therefore directed to review the current regulation and consider the need for addressing these problems through this rulemaking process.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 1600.

On a rollcall vote of 14 yeas and 4 nays as follows, the Committee ordered S. 1600 favorably reported:

YEAS—14	NAYS—4
Mr. Hollings	Mr. Adams
Mr. Inouye	Mr. Danforth
Mr. Ford	Mr. Packwood
Mr. Riegle	Mr. Trible
Mr. Exon	
Mr. Gore	
Mr. Rockefeller	
Mr. Bentsen	
Mrs. Kassebaum	
Mr. Pressler	
Mr. Stevens	
Mr. Kasten	
Mr. Wilson	
Mr. McCain	

MINORITY VIEWS OF MESSRS. DANFORTH AND ADAMS

We share Senator Ford's frustration with the many problems facing today's air transportation system. There is merit in many of the reforms set out in the Federal Aviation Administration Independent Establishment Act. The Commerce Committee has heard convincing testimony that the FAA would benefit from greater flexibility in setting salaries, particularly for air traffic controllers. There is a need for budget reform. There is a need for improved rules for procurement of computers, navigation aids, radar equipment and weather observation systems that are state-of-the-art.

The scope of this bill, however, is much broader. It requires a major organizational change which is opposed by those who have hands-on responsibility for aviation policy. Transportation Secretary James H. Burnley has questioned the ability of an independent FAA to perform the dual functions of air traffic control and air safety regulation. His testimony before the Aviation Subcommittee included examples in which the Transportation Secretary's intervention resulted in improved safety. Office of Management and Budget Director James C. Miller also opposes an independent FAA. National Transportation Safety Board Chairman Jim Burnett testified that the FAA's status as an independent agency, removed from national transportation policy concerns, might actually reduce the effectiveness of the Safety Board's efforts to achieve real world safety improvements.

This bill would give the FAA Administrator a 7-year term. The Administrator is directed to carry out his functions "[u]nder the supervision and direction of the President." This may imply direct Presidential policy guidance. The next sentence of the bill, however, dictates that the standard for removal of the Administrator is "neglect of duty or malfeasance in office." This language contradicts the concept of Presidential direction. Instead, it suggests that disagreements over aviation policy would not provide grounds for removal of the Administrator. If we are seeking a Federal Government that is more responsive to the public it serves, then this bill goes in the wrong direction.

This Committee has had experience with other independent agencies. It has not always been rewarding. Agency chairmen appear before this Committee and are apprised of our concerns. All too frequently, those concerns remain unaddressed. Given this experience, it is curious that this Committee should now want to create another independent agency—an agency that could be equally unresponsive to Congress, and could be unresponsive to the President, as well.

The FAA is primarily a technical agency. In the words of NTSB's Chairman Burnett, it views the world through "aviator's goggles," while DOT looks through the "passenger's window." The FAA may have technical expertise, but DOT has a perspective on the public

interest that comes from its responsibility to coordinate overall transportation policy. In addition, as a Cabinet-level department, DOT has clout within the executive branch. An independent FAA will find it difficult to counter OMB's budgetary pressure and secure adequate aviation funding.

Finally, and most important, is safety. We question the wisdom of giving an independent agency the dual responsibility of operating the air traffic control system and regulating the safety of that system. Given recent events, including last year's alarming increase in near mid-air collisions and the frightening example of an older airplane literally falling apart in flight, we question whether it is in the public interest for the FAA to be responsible for aviation safety, but beyond the immediate control of both the President and the Congress.

Senator Ford deserves enormous credit for the work he has put into this bill, and for his role in concentrating the attention of Congress, the administration, and the aviation industry on the need for improvement. This bill, however, is not the answer. Reorganization will not improve air safety, the efficiency of air travel, the operation of the air traffic control system, or the development of aviation policy.

BROCK ADAMS.
JOHN DANFORTH.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

Section 506 of that Act

SEC. 506. AIRWAY IMPROVEMENT PROGRAM.

(a) AIRWAY FACILITIES AND EQUIPMENT.—

(1) GENERAL AUTHORIZATION.—For the purposes of acquiring, establishing, and improving air navigation facilities under section 307(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1348(b)), there are authorized to be appropriated from the Trust Fund for fiscal years beginning after September 30, 1981, aggregate amounts not to exceed $6,327,000,000 for fiscal years ending before October 1, 1987, $7,704,000,000 for fiscal years ending before October 1, 1988, $9,434,000,000 for fiscal years ending before October 1, 1989, [and] $11,625,200,000 for fiscal years ending before October 1, 1990, *and $13,615,200,000 for fiscal years ending before October 1, 1991.* Amounts appropriated under this subsection shall remain available until expended.

(2) through (3) * * *

(b) RESEARCH, ENGINEERING AND DEVELOPMENT, AND DEMONSTRATIONS.—

(1) * * *

(2) GENERAL AUTHORIZATION.—For research, engineering and development, and demonstration projects and activities under section 312 of the Federal Aviation Act of 1958 and paragraph (1) of this subsection, there is authorized to be appropriated from the Trust Fund—

(A) for fiscal year 1988—

(i) through (vii) * * *

(B) for fiscal year 1989—

(i) through (vi) * * *

(vii) $2,600,000 solely for environmental projects and activities; [and]

(C) for fiscal year 1990, $222,000,000[.]*; and*

(D) for fiscal year 1991, $250,000,000.

(3) * * *

(4) FUNDING FOR ENHANCING AIRPORT CAPACITY.—

(A) GENERAL RULE.—Notwithstanding any other provision of this subsection, of funds made available under paragraph (2) in each of fiscal years 1988, 1989, [and 1990,] *1990, and 1991,* not less than $25,000,000 per fiscal year is authorized to be appropriated for research and development on preserving and enhancing airport capacity (including research and development on improvements to airport design standards, airport maintenance, airport safety, airport operations, and airport environmental con-

erns) under section 312 of the Federal Aviation Act of 1958.

(B) REPORT.—Not later than 60 days after the last day of each of fiscal years 1988, 1989, [and 1990,] *1990, and 1991,* the Administrator of the Federal Aviation Administration shall transmit to the Committee on Science, Space, and Technology and the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made by the Administrator for research and development under subparagraph (A) in such fiscal year.

(5) * * *

(c) * * *

(d) WEATHER SERVICES.—The Secretary is authorized to reimburse the National Oceanic and Atmospheric Administration from the funds authorized in subsection (c) for fiscal years beginning after September 30, 1982, for the cost of providing the Federal Aviation Administration with weather reporting services. Expenditures for the purposes of carrying out this subsection shall be limited to $34,998,000 for fiscal year 1987 and $30,000,000 per fiscal year for each of fiscal years 1988, 1989, [and 1990] *1990, and 1991.*

(e) through (f) * * *

TITLE 49, UNITED STATES CODE

Section 106 of that Title

[§ 106. Federal Aviation Administration

[(a) The Federal Aviation Administration is an administration in the Department of Transportation.

[(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. The Administrator reports directly to the Secretary of Transportation.

[(c) The Administrator must—

[(1) be a citizen of the United States;

[(2) be a civilian; and

[(3) have experience in a field directly related to aviation.

[(d)(1) The Deputy Administrator must be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular officer of an armed force, or a former regular officer of an armed force.

[(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive (A) the pay provid-

ed by law for the Deputy Administrator, or (B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

[(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

[(e) The Administrator and the Deputy Administrator may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

[(f) The Secretary shall carry out the duties and powers, and controls the personnel and activities, of the Administration. The Secretary may not submit decisions for the approval of, nor be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

[(g) The Administrator shall carry out—

[(1) duties and powers of the Secretary related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of this title and sections 306–309, 312–314, 1101, 1105, and 1111 and titles VI, VII, IX, and XII of the Federal Aviation Act of 1958 (49 App. U.S.C. 1347–1350, 1353–1355, 1421 et seq., 1441 et seq., 1471 et seq., 1501, 1505, 1511, and 1521 et seq.); and

[(2) additional duties and powers prescribed by the Secretary.

[(h) Section 103 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1303) applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers is administratively final.

[(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.]

INSPECTOR GENERAL ACT OF 1978

Section 2 of that Act

PURPOSE; ESTABLISHMENT

SEC. 2. In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, * * * the Veterans' Administration, *the Federal Aviation Administration,* and the Department of State;

(2) through (3) * * *
thereby is hereby established in each of such establishments an office of Inspector General.

TITLE 5, UNITED STATES CODE

Section 5312 of that Title

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:
Secretary of State.
* * *
(15) Secretary of Education.
Administrator, Federal Aviation Administration.

Section 5313 of that Title

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:
Deputy Secretary of Defense.
* * *
Secretary of the Navy.
[Administrator, Federal Aviation Administration.]
Deputy Administrator for Operations and Administration, Federal Aviation Administration.
Deputy Administrator for Safety, Federal Aviation Administration.
* * *

Section 5315 of that Title

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 as adjusted by section 5318 of this title:
Deputy Administrator of General Services.
* * *
[Deputy Administrator, Federal Aviation Administration.]
Associate Administrators, Federal Aviation Administration (8).
Chief Counsel, Federal Aviation Administration.
* * *

Section 5316 of that Title

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate de-

termined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

* * *

Associate Deputy Secretary, Department of Transportation.

Chief Scientist, National Oceanic and Atmospheric Administration.

Inspector General, Federal Aviation Administration.

○

Calendar No. 860

100TH CONGRESS
2d Session

SENATE

REPORT
100-444

PUBLIC TELECOMMUNICATIONS ACT OF 1988

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

together with

ADDITIONAL VIEWS

on

S. 2114

AUGUST 2 (legislative day, AUGUST 1), 1988.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

19-010

WASHINGTON : 1988

S263-18

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ADDITIONAL VIEWS

[To accompany S. 2114]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2114) entitled the "Public Telecommunications Act of 1988", having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 2114, as reported, authorizes appropriations for the Corporation for Public Broadcasting (CPB) and the Public Telecommunications Facilities Program (PTFP). For the CPB, it authorizes $304 million for fiscal year 1991, $354 million for fiscal year 1992, and $404 million for fiscal year 1993. S. 2114 also authorizes $200 million to be used to replace the public broadcasting satellite interconnection system. For the PTFP, S. 2114 authorizes $36 million for fiscal year 1989, $39 million for fiscal year 1990, and $42 million for fiscal year 1991. In addition, S. 2114 revises the method by which the CPB allocates its funds.

BACKGROUND AND NEEDS

The CPB is a private nonprofit corporation organized under the laws of the District of Columbia. In 1967, in amendments to the Communications Act of 1934 ("the Act"), Congress authorized

CPB's establishment to foster the growth and development of high-quality programs for and by public radio and television broadcasters, (Public Law 90–129). The CPB is to act as the public trustee for funds appropriated pursuant to the Act. The CPB's responsibilities include encouraging the full development of public telecommunications services for the American people. It is the principal entity accountable to the Congress for the expenditure of appropriated funds.

The Committee endorses the resolution passed by the CPB Board on May 17, 1988, reiterating the principal contributions the Corporation can make to public broadcasting:

> To fund the production and acquisition of excellent and diverse programming of more than local interest which is not available elsewhere; and
>
> To maintain a system for connecting local public broadcasting stations so that they can share programming and make it available to all Americans.

The changes the Committee has made in the Act under the reported bill are intended to enhance the ability of public broadcasting to bring quality national programming from diverse sources to the full diversity of the American people. Over the past twenty years, Federal investment has enabled the CPB and the public broadcasting system to build a nationwide service reaching 82 percent of the American people with a public radio signal and 93 percent with a public television signal. It is now time to reorient these goals.

First, funds provided to public radio and television should be used in the production or acquisition of quality national programming. It is this programming that makes public broadcasting unique and important to the American public. Second, these funds should help extend the reach of public radio to unserved and underserved audiences. More and more Americans are turning to public radio for in-depth domestic and international news coverage and commentaries on political, economic, and social trends. In addition, public radio is creating a national awareness of American cultural treasures in music and drama. It has also stimulated interest in and greater appreciation for American performers, conductors, directors, and producers. Many more Americans, including the elderly, ethnic minorities, children, and the handicapped, can be better served by public radio if we can substantially increase the number and diversity of the CPB qualified stations. Increasing the number of stations will strengthen and expand the diverse pattern of local stations and national programming which is at the heart of public radio's success to date.

AUTHORIZATION

The Commerce Committee is responsible for reporting the authorization legislation for the CPB and the PTFP. The CPB funding has been authorized through fiscal year 1990, and the PTFP has been authorized through fiscal year 1988. The CPB funding is authorized three years in advance primarily because the production of programming often takes years of planning. Consequently, it is

important for the CPB to know as soon as possible how much funding it can expect.

Public Telecommunications Facilities Program

The PTFP is authorized every 3 years. This authorization will be for fiscal years 1989, 1990, and 1991. The PTFP was established to extend the delivery of public broadcast services, increase the number of facilities serving and operated by women and minorities, and assist stations in improving their facilities. Each year the PTFP receives far more requests than it can satisfy.

As in all past years, the administration has sought to eliminate the PTFP, arguing that its goals have been achieved. The Congress has consistently rejected this argument and has been increasing funding for this program. The following chart sets forth the proposed funding in S. 2114 as reported for fiscal years 1989–91:

1989	$36,000,000
1990	39,000,000
1991	42,000,000

The Committee believes these amounts represent modest increases and are necessary to ensure the success of this program. In particular, the increases proposed here are to cover additional funding requests and account for inflation. During the hearings, the Committee found that the program has been receiving over 300 applications a year, totaling over $80 million, but has been able to accept only 115 and award only $19,200,000.[1] As for inflation, the cost of transmission equipment and other necessary facilities has increased between 8 percent and 25 percent in the last 5 years.

Corporation for Public Broadcasting

Three-year funding for the CPB is authorized 3 years in advance. This authorization will be for fiscal years 1991, 1992, and 1993. By statute, the CPB can only use up to 10 percent of its funding for operations, research, and training. Of the remaining 90 percent, the CPB is required to distribute 75 percent of its funding for television stations and 25 percent for radio stations.

The President requested $214,000,000 for fiscal year 1991 (as well as a rescission in the already appropriated funds for fiscal years 1989 and 1990). The CPB requested $595,000,000 for fiscal year 1991—$200,000,000 to replace the satellite interconnection system (SIS) and $395,000,000 for education and programming and operating expenses.[2] The funding levels in S. 2114 represent a middle ground between these two positions.

The following chart sets forth the CPB authorization for fiscal years 1991–93:

CPB	
1991	$304,000,000
1992	354,000,000
1993	404,000,000
SIS	
Total for 3 years	$200,00,000

[1] Hearing on S. 2114, March 15, 1988 (S. Hrg. 100–604), at 108.
[2] S. Hrg. 100–604, at 10.

The proposed increase in funding will be used in part to maintain current levels of support provided by the CPB. Stations are faced with ever-rising operating and production costs. In addition, the increase will be used to fund new national programming aimed at serving the needs of unserved and underserved audiences and programming designed to reach out to the community with solutions to local problems. The increase will also be used to expand the number of public radio stations by 60 a year and enhance their ability to serve each local community. The useful life of the public broadcasting satellite transponders is expected to end in mid-1991. In addition, the ground system will be about 15 years old. Consequently, the additional $200,000,000 of SIS will be needed to replace the transponders and update the ground system.

REPLACEMENT OF THE PUBLIC BROADCASTING SATELLITE SYSTEM

In the Act, Congress authorizes the CPB to assist in the establishment of one or more interconnection systems to provide program suppliers with the means to distribute programs to local public television and radio stations (47 U.S.C. 396(g)(1)(B)). By assisting with the development of the distribution systems presently used by public television and radio, by providing funds to help meet the operating costs of those systems, and by helping to establish structural safeguards for system operation, the CPB has played an important part in ensuring that effective distribution systems for public television and radio have become a reality, while respecting the fundamental premise of localism on which public broadcasting was founded. To further system interconnection, Congress has also permitted common carriers to provide free or reduced rate services for public television or radio. (47 U.S.C. 396(h)(1).)

In 1978, public television and radio became the first extensive broadcasting systems in the nation to switch from a system of land line distribution to satellite interconnection. Since that time, the satellite distribution system used by public television and public radio has provided a fast, easy, and economical method of distributing programming from a variety of sources.

Uses and Components of the Satellite System

The current public television satellite interconnection system consists of: four transponders owned by the Public Broadcasting Service (PBS) on the Westar IV Satellite; receive-only ground terminals owned by individual public television stations; the Main Origination Terminal, owned by PBS, from which programs are transmitted; and a number of uplink facilities owned by regional organizations and other entities.[3] Currently, public television uses all of its transponders except a portion of one, which is leased to another entity on a preemptible basis. All of the income generated by that lease is used to offset costs related to satellite interconnection. Those distributing programming over the public television system include PBS, regional public television networks, State public television networks, individual public television stations,

[3] S. Hrg. 100-604, at 50.

other public television entities, and independent program producers and distributors.

The public radio satellite system consists of one transponder on Westar IV owned by a trust on behalf of all participating public radio stations; the Main Origination Technical Center, operated by National Public Radio (NPR) and owned by another station beneficial trust; 20 uplinks owned by individual public radio stations; and 289 downlinks also owned by public radio stations. NPR, a nonprofit membership organization providing programming, distribution, and representation services to public radio stations, owns two transportable uplinks which are available for on-site transmission of events at remote locations throughout the country.[4] Programs are distributed 24 hours a day, 7 days a week over as many as 22 high-quality audio channels. In 1987, the system linked together approximately 250 different suppliers with more than 300 public radio stations, transmitting more than 20,000 hours of public radio programming.

Advantages of Satellite Distribution

The distribution of programming as well as other information via satellite has proven to be a tremendous success. For example, the national satellite system:

—Enables program suppliers to transmit, and local stations to receive, programming through an efficient and economical distribution system;
—Ensures reliable public broadcasting signals of high technical quality;
—Allows broadcasts in stereo, captioning, and enhanced audio for the blind;
—Increases diversity and local autonomy through distribution of time zone feeds and simultaneous transmission of programs from diverse sources, enabling each station to decide which programs to use and when to use them;
—Enhances the self-sufficiency of public broadcasting through interconnection cost savings and support-generating opportunities;
—Enables public broadcasting to interconnect new stations quickly and easily;
—Provides opportunities to develop educational and other special services such as the Adult Learning Service, National Narrowcast Service, Elementary/Secondary Services, and VBI Data Delivery Service; and
—Enables stations in Hawaii, Alaska, Puerto Rico, and the Virgin Islands to have timely and equal access to public broadcasting's program offering.

Need for a Replacement System

By mid-1991, Westar IV, the satellite on which public broadcasting's transponders are located, will run out of fuel and be retired, and replacement transponder capacity will have to be obtained. Changes in the existing ground facilities will be required to corre-

[4] S. Hrg. 100–604, at 106.

spond to changes in satellite facilities. Changes in the ground system also will be required as a result of the physical and technical age of the existing ground equipment. In addition, changes in the satellite regulatory environment (*e.g.*, the Federal Communications Commission (FCC) authorization of satellite spacing two degrees apart in the orbital arc) and emerging technologies may require adjustments to the existing ground facilities.

The Committee strongly believes that funding for replacement of the satellite interconnection system is essential to ensure continued high quality service and must be authorized this fiscal year. Not only is it important to provide for continued service, but replacement interconnection facilities also could potentially support increases in program offerings and related services, more specialized programming, and expansion of service areas.

The Satellite Interconnection Fund

Under the reported bill, new subsection 396(k)(10)(A) of the Act establishes a special fund—referred to as the Satellite Interconnection Fund—from which expenses associated with the replacement, refurbishment, upgrading, and maintenance of the national satellite systems are to be paid. The Satellite Interconnection Fund, together with all accrued interest or other earnings on such monies (hereinafter referred to as the "Fund") will be used to ensure the continued provision of the high quality interconnection services presently offered by public broadcasting, facilitate the growth of public broadcasting's interconnection system, and encourage innovative uses of such systems.

Public television and radio are still in the process of determining the best technological systems to meet their future needs. The Committee, however, believes after extensive discussion with public broadcasting and outside experts that a replacement system should cost close to, if not more than, $200,000,000. Since the entire amount may not be needed in 1991, the bill authorizes this amount for a 3-year period. At the same time, the Committee strongly believes that at least one-third of the money needs to be appropriated in fiscal year 1991 so that public broadcasting can negotiate the most favorable agreements and ensure continued service.

This funding level is based on the need to continue the existing services and provide for increased service in future years. Currently, public radio uses one transponder, and through 1993–94 one should be sufficient. However, based on past trends, anticipated increase in the number of interconnected stations and the anticipated growth of digital audio technology, it is anticipated that by 1995 public radio will need additional satellite capacity.

One of the goals of this Act is to encourage the expansion of public radio. As discussed above, both NPR and the CPB hope to expand the number of CPB-qualified radio stations at the rate of 60 per year over the next 3 years. Morever, based on the historical growth since 1985, NPR anticipates an 8 percent increases in full-time and 2 percent increase in occasional satellite users annually. At that growth rate, even without the addition of 60 new stations per year, the capacity of one transponder would be consumed by 1993–94.

Moreover, the incorporation of digital audio into the current system requires more bandwidth and power per channel. Public radio licensees do not expect a complete switch to digital audio in the next 12 years because it would require replacement of all of the ground equipment. Public radio licensees, however, should have the capacity to incorporate some digital service into their system in future years. Even without use of digital, public radio will outgrow one transponder within a few years of its acquisition.

If public radio were to lease or acquire two transponders in 1991, it could sell or lease a share to multiple customers until such time as public radio requires the second transponder's a capacity. Historically, shared-use revenues have been used to subsidize the fees charged to stations and program producers distributing programs via the public radio satellite. In recent years, as satellite use has increased, these shared-use revenues have carried an increasing part of the operating cost load. This trend is expected to continue.

The effect of shared use is to reduce the cost of providing satellite service to public radio, freeing more funds for other uses like program production. Shared-use revenues however, do not cover the costs of operating the satellite system. Thus, the financial implications of reducing transponder capacity for shared use must be carefully weighed against public radio's needs and the ability to obtain additional capacity for public radio. Reducing or eliminating the revenues from shared use will increase the cost of the system to the stations.

The costs of maintaining public radio's current capacity, without providing for future expansion beyond one transponder, are estimated to be approximately $31,300,000 ($16,500,000 for the transponder, $12,300,000 to replace and refurbish the ground system, and $2,500,000 for taxes, interest and other project costs). The acquisition of a second transponder would increase the cost by an additional $23,400,000 for a total of $54,700,000.

In the case of public television, the satellite replacement costs are much higher. Public television currently uses all of the capacity of three transponders and approximately one-third of a fourth transponder. Although there are fewer public television stations than radio, public television currently is available to 93 percent of the American public. It is not anticipated that there will be a significant increase in the number of stations utilizing the public television satellite system. Use of public television to provide educational services however, is increasing at a tremendous rate. In addition, provision of an unscrambled feed of PBS national programming for satellite dish owners could increase the demands on the television satellite system. Public television, like public radio is rapidly reaching the point where it will be utilizing all of its satellite capacity (including the portion of the fourth transponder that is currently leased).

Specifically, PBS is in the process of expanding its Adult Learning Satellite Service (ALSS) which provides programs directly to colleges and universities via satellite. The ALSS is expected to deliver 4,000 hours of programming via satellite by the mid-1990's. In addition, PBS is designing an Elementary Secondary Service (ESS) which will deliver educational programming to elementary and secondary schools. ESS will have the capability of providing 1,000

hours of programming per year by the mid-1990's. PBS, in cooperation with other educational organizations, is also designing a professional development service for teachers, administrators, and other school personnel. The goal of this service will be to provide approximately 4,000 hours of satellite programming per year. These three projects, when they reach their full capacity, will need in excess of one transponder to deliver the programming because most of the programming will be delivered during school and business hours. If PBS devoted one transponder to these services, they would have to send programming almost 24 hours a day and have the schools tape the programs delivered late at night and replay them the next day.

PBS's conversion to the VideoCipher II scrambling system should also require the use of one transponder to provide a clear unencrypted signal of its programming for home satellite dish owners. PBS is attempting to provide the clear feed using current capacity. However, as discussed below, due to scheduling and time zone problems, PBS is finding it difficult to maintain the clear feed on one channel. As a result, satellite dish owners are frustrated in their efforts to locate the clear feed. If PBS is unable to resolve this problem, it may have to switch all of the programming to one transponder to provide one clear feed on one channel. If this occurs, PBS will have to regain control of the portion of the transponder it is not using and possibly acquire additional capacity on another transponder.

In order to facilitate the expansion of its educational services, PBS is planning to acquire 4 C-Band transponders and 2 Ku-Band transponders. The C-Band transponders will enable PBS to continue to provide its current services to stations and expand its educational services to those schools with C-Band facilities. Many school systems and State educational systems are planning on utilizing Ku-Band because of its advantages over C-Band; Ku-Band is capable of being more directional and the ground system causes far less interference to other services than C-Band. Because of its superiority, the Ku-Band system is also more expensive than C-Band.

Although PBS has not actually entered an agreement to purchase new equipment, based on current market conditions it is anticipated that replacement of the current C-Band system without any expansion will cost $87,300,000 ($60 million for the transponders, $15,900,000 to replace the ground equipment, and $11,400,000 for project costs). The addition of two Ku-Band transponders and the necessary ground equipment would cost an additional $94,200,000 ($60 million for the transponders, $21,9 million for the ground equipment, and $12,300,000 for project costs). The total cost of the expanded system would be $181,500,000.

Thus, the total cost of the expanded public radio and television satellite system is estimated to be $236,200,000. The stations themselves would be required to pay the additional costs over the proposed authorization.

Under the reported bill, new subsection 396(k)(10)(C) of the Act directs the Secretary of the Treasury to disburse appropirated funds to the CPB at the beginning of each fiscal year.

In order to ensure that the expenditures of the funds are consistent with the needs of the locally based recipients (as defined below)

and their local communities for national interconnection services, under the reported bill new subsection 396(k)(10)(D)(i) of the Act requires that the entire Fund be distributed by the CPB directly to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services (the "Television Recipients") or the national entity they designate for satellite interconnection purposes, and to those public telecommunications entities participating in the public radio satellite interconnection system (the "Radio Recipients") or the national entity they designate for satellite interconnection purposes. Radio Recipients are those organizations which meet participation criteria established by the public radio satellite system governance body. Radio Recipients must sign agreements with the radio-system-operating agency allowing them to share the governance of the system and obligating them to pay a full share of the operating costs of the system. The Television Recipients and Radio Recipients are collectively referred to herein as the "Recipients."

The entire Fund must be used exclusively for the capital costs of the replacement, refurbishment or upgrading of public broadcasting's national satellite interconnection systems, and associated maintenance [5] costs of such systems. The Committee intends that the costs may include the lease costs of satellite transponders or other equipment should that prove more advantageous to the Recipients than a purchase arrangement, as well as the costs of project planning, engineering evaluation and design, and implementation that may be incurred by the Recipients or the national entities they designate. Under the reported bill, new section 396(k)(10) modifies existing law only as expressly stated therein and the CPB's obligation to distribute monies for maintenance of the refurbished or replaced interconnection facilities under this new provision is not meant to impose upon the CPB any additional obligations, beyond those obligations imposed by existing law, to fund such costs in excess of amounts appropriated into the Fund.

The CPB is fully accountable to the Congress for the expenditure of public funds appropriated to it in furtherance of the goals established by Congress for public broadcasting. It is the intention of the committee to maintain existing provisions of law relating to open meetings, maintenance of financial information, community advisory boards, and annual rates of pay which are made expressly applicable to the Fund. (47 U.S.C. 396(k)(4), (5), (8), and (9).) New section 396(k)(10) is not intended to modify any of the CPB's obligations and authorities to properly account for the expenditure of Federal monies.

Under the reported bill new subsection 396(k)(10)(ii) provides that monies appropriated into the Fund shall not be used for any administrative or overhead costs of the CPB, the salaries or related expenses of CPB personnel and members of the Board, or for expenses of consultants and advisors to the CPB. By this provision,

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[5] Both NPR and PBS provide maintenance services to public stations from a central location. When the interconnection system is replaced this maintenance equipment may also have to be retooled, upgraded, or replaced. In addition, for example, additional funding may be necessary to contract for maintenance to be provided by the equipment manufacturers depending on the cost. Accordingly, funding is authorized to ensure that adequate maintenance can be provided for the new systems.

the Committee intends that the entire Fund be used for the replacement, refurbishment, upgrading, or maintenance of public broadcasting's national satellite interconnection system.

Public television and public radio share the need to assure continued satellite interconnection capability, but each system is organized and governed in a manner which best suits the stations that system serves. The Committee has addressed the common need in this legislation by establishing a single Fund, but it is important to note specific elements which differentiate public television from public radio and the reasons why they need separate satellite systems.

PBS, a nonprofit membership corporation that includes virtually all of this nation's public television stations, operates the satellite distribution system under an agreement with the CPB. PBS's Board of Directors is elected by its member stations. Licensees of all public television stations elect representatives to the Interconnection Committee, which develops and monitors policies for the use of public television's satellite transponders.

The public radio satellite interconnection system is managed by the NPR Distribution Division under an agreement with the CPB. The total number of radio stations licensed for noncommercial operations by the FCC is larger than the number of radio stations supported by the CPB or the universe of stations electing to become members of NPR. Participants in the public radio satellite interconnection system include some stations and other public telecommunications entities which are neither NPR member nor receive grants form the CPB. For this reason, the governance of the public radio interconnection system includes representatives of all entities meeting the participation criteria, regardless of NPR membership status or Corporation Community Service Grant qualification status. The Distribution/Interconnection Committee of the NPR Board, augmented by representatives of non-member stations and independent producers, develops policies for system operation and governance, subject to NPR Board supervision and review. This historical governance structure is expected to be the mechanism for entities participating in the public radio interconnection system to decide their needs collectively and to utilize their share of the Fund in the most efficient manner.

COMMERCIALIZATION OF PUBLIC BROADCASTING

Although this legislation does not alter section 399B of the Act, the Committee is very concerned about "creeping commercialism"—as evidenced by the enhanced underwriting rules. Members of the Committee have expressed concern over the similarity between the "commercials" shown and heard on public and commercial stations.[6] Underwriting credits that resemble commercial advertisements violate the spirit of the Act. It also raises concerns that public stations are competing with local stations for advertising revenues. The Committee strongly believes in the original, non-

[6] *See*, S. Hrg. 100-604, at 143-144, November 12, 1987 Hearing on the 20th Anniversary of Public Broadcasting, S. Hrg. 100-477, at 61.

commercial purpose of public broadcasting. This is what separates it from other broadcast fare and justifies government support.

AMENDMENTS TO THE PUBLIC BROADCASTING ACT

Basis for Amendments

Local Control.—Today, the direction of public broadcasting is guided by the principle of localism; every broadcaster's first obligation is to the community to which it is licensed, not to Congress or the CPB.[7] These stations have demonstrated a commitment to serving the communities to which they are licensed, both through local and national programming. Moreover, Congress has vested the responsibility with the stations, not the CPB, for determining what programs are broadcast. Thus, no matter what programming the CPB funds, the stations have the control over what is aired. The communities that stations serve and their Boards of Directors, who are representatives of those communities, determine how stations spend their funds and what programs stations broadcast. Congress and the CPB, however, can influence some of those decisions. In order to stay within the confines of the First Amendment, the amount of influence must be minimal.

Political Insulation.—The Communications Subcommittee has held three hearings this Congress that address public broadcasting issues: the November 1987 hearing on the structure of public broadcasting; the March 1988 hearing on S. 2114; and the April 1988 hearing on S. 1935, the transfer fee/trust fund bill. At all three hearings, witnesses expressed concern that the CPB's funding decisions are not sufficiently insulated from political influence.

This problem exists because the CPB is controlled by political appointees, and the most visible activity of the CPB is financing programming. The CPB's unilateral control over program funding decisions enables it to affect the content of programming at its most critical point—its source. Programs without funding never get on the air.

The CPB's involvement in, or interference with, public broadcasting program decision-making has been a matter of concern virtually from the first days of the Corporation. The Carnegie Commission, which recommended that the CPB be created, envisioned that it would be funded from a trust rather than from funds appropriated by Congress. The Commission recognized that control over the funding levels could lead to undue political influence. As discussed below, funding has proved to be the instrument most often used to influence program content.

In its first years of operation in the late 1960's and early 1970's, the CPB made "block grants" to major production centers to produce programming for the national program service, essentially as envisioned by the first Carnegie Commission on Educational Television. The grants were based on the producers' track records and capabilities, not on specific program-by-program authorizations from the CPB.

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[7] This has been the case since the CPB was first created. *See,* Senate Report No. 222 (90th Cong., 1st Sess.) reprinted in (1967) U.S. Code, Cong. & Ad. News 1772, 1778.

By the beginning of the 1970's, however, the CPB ended the "block grant" method and began making grants only for individual programs or series that it selected for support. A Programming Committee of the CPB Board was established, in part to review management recommendations on the programs or series to receive CPB support.

In the early 1970's, PBS, though nominally an independent organization governed by a board elected by the stations, was financed entirely by the CPB. Early in 1972, the PBS President was summoned to appear in private session before the CPB Board Programming Committee to justify and defend (in general and with reference to specific instances) the policies on journalism standards and standards of taste that had been adopted by vote of the public television licensees to govern PBS's operations. PBS's policies provided that programs under dispute nonetheless should be made available to any licensee who wished to review them and make their own decisions. The CPB Board members pressed PBS instead to refuse to distribute programs on the interconnection system at all if they did not accord with PBS management's standards of taste or journalism.

In the early years, programs financed with the CPB's assistance and intended for national distribution were made available by the producer directly to PBS when they were completed. In the summer of 1972, the CPB changed its policy to require that, henceforth, completed programs must be submitted first to the CPB for content review; the CPB would then decide whether to release the program for distribution to public stations. PBS objected strenuously to the announced policy. It was never formally implemented; the issue was subsumed in the larger controversy that followed.

In the summer of 1972, President Nixon vetoed a CPB authorization bill over the matter of programming, leading to the resignation of the CPB's top officers and the replacement of its board chairman. On a television talk show in early 1973, Patrick Buchanan, then on the White House staff, explained that the bill had been vetoed because of the involvement of Sander Vanocur, Robert MacNeil, Bill Moyers, and Elizabeth Drew in public television public affairs programs, as well as *Washington Week in Review* and *Black Journal* which were also "unbalanced against us." [8]

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[8] Carnegie Commission on the Future of Public Broadcasting: "A Public Trust", April 1979, pp. 43–46 (hereinafter cited as "Carnegie II"). Patrick Buchanan's explanation on the *Dick Cavett Show* of President Nixon's veto of the public broadcasting authorization bill, as quoted in the Carnegie II Report:

"Now, when [the authorization bill] came down to the White House, we took a look at it, and we also looked at the situation over there. I did personally. I had a hand in drafting the veto message. And if you look at the public television, you will find you've got Sander Vanocur and Robert MacNeil, the first of whom, Sander Vanocur is a notorious Kennedy sycophant, in my judgment, and Robert MacNeil, who is anti-administration. You have the Elizabeth Drew show on, which is, she personally is definitely not pro-administration. I would say anti-administration. *Washington Week in Review* is unbalanced against us, you have *Black Journal*, which is unbalanced against us . . . you have Bill Moyers, which is unbalanced against the Administration. And then for a fig leaf they throw in William F. Buckley's program. So they send down there a $165 million package, voted 82 to 1 out of the Senate, thinking that Richard Nixon would therefore—he would have to sign it, he couldn't possibly have the courage to veto something like that. And Mr. Nixon, I'm delighted to say, hit the ball about 450 feet down the right field foul line, right into the stands and now you've got a different situation in Public Television. You've got a new ball game at CPB. You've got a new awareness that people are concerned about balance. And all this administration has ever asked for on that, or on any network television, frankly, is a fair shake."

In the fall of 1972, the new President of the CPB instructed the President of PBS, in a private conversation, that it would be necessary for PBS to stop distributing public affairs programs nationally to the stations. The Carnegie Commission on the Future of Public Broadcasting, writing in 1979, reviewed the actions of the CPB Board in this regard:

> First, the CPB Board voted to discontinue funding of all public affairs programming, except for *Black Journal.* Second, it rescinded a staff commitment to provide multiyear funding to the National Public Affairs Center for Television (NPACT). Finally, in January, 1973, the CPB Board unanimously voted to take from PBS certain legal, research, public awareness, and programming functions, including "the decisionmaking process, and ultimate responsibility for decisions, on program production support or acquisition [and] the pre-broadcast acceptance and post-broadcast review of programs to determine strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.[9]

That Board resolution also provided tht the CPB, not PBS, would henceforth operate the interconnection, determining which programs would or would not be made available to stations.[10]

At the urging of Congressional leaders, negotiations were initiated to resolve the differences. At the eleventh hour, the CPB Chairman Thomas Curtis, a former Congressman, resigned, charging that the White House had interfered with the negotiations through contacts with individual CPB Directors.[11]

Subsequent negotiations concluded a CPB–PBS "Partnership Agreement" which provided that PBS would continue to operate the interconnection and schedule programs for distribution; but the agreement did not prevent continuing disputes about the CPB's role in program funding. Continuing entreaties to the CPB for increased support for television programming were not successful, and by late 1974 the PBS Board proposed that the law be amended to provide substantially greater direct funding to the licensees to enable them to assume national program funding responsibility.[12]

Disputes about individual program funding decisions continued. A November 1976 resolution of the PBS Board urged the CPB Board to consider that "CPB's attempts to initiate and develop programming are inconsistent with the principles [of local licensee responsibility for the operation of broadcasting stations in general and local control of public broadcasting in particular] and risk frustration of [CPB's responsibility] for shielding and insulating the system from political influence, interference and control." [13]

Later in the 1970's, the CPB proposed a "revolving documentary fund", which would permit its Board to make individual decisions regarding which proposed documentaries would or would not be funded. The PBS Board appealed to the CPB Board not to become

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[9] Carnegie II at 45–46.
[10] CPB Board Resolution, January 10, 1973; Carnegie II at 46.
[11] Carnegie II at 46.
[12] PBS Executive Resolution, October 25, 1974.
[13] PBS Board Resolution, November 18, 1976.

involved in the selection and rejection of specific topics for documentary treatment, and in a compromise, the CPB Board decided not to do so.

Not until 1978, after almost a decade of operation, did the CPB Board accept and agree to the proposition that it should not be involved in decisions regarding the funding of (or failure to fund) individual programs and series. The CPB undertook a review of its program funding mechanisms and procedures with this in mind.[14] In August 1979 it agreed to establish a quasi-autonomous Program Fund within the CPB, whose Director (selected by the CPB President in consultation with representatives of the licensees) would make program funding decisions according to general priorities adopted by the Board, but independent of individual program review by the Board or by the general management of the CPB. (In 1988, the structure was changed again to revert to that prevailing before 1979: the Program Fund Director now again reports to the President.)

The Carnegie Commission on the Future of Public Broadcasting, under the chairmanship of Columbia University President William McGill, concluded in 1979 that problems of political influence were persistent and inherent in the structure of the CPB. Regarding the CPB's performance during the period of the attacks by the Nixon Administration, the Commission suggested that there were "two major lessons" to be drawn:

> The first lesson is that the CPB Board failed to provide leadership and insulation for the public broadcasting system, one of its major mandates from Congress and the first Carnegie Commission . . . the board took action to downplay public affairs programming in order to avoid placing the entire federal appropriation in jeopardy. Rather than fight for the system's independence from political interference, CPB's decisions about National Public Affairs Center for Television (NPACT), various public affairs series, and the takeover of PBS functions seem to us to have been an attempt to mollify the administration in order to maintain the funding that was now life and death to the system. . . .
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> Furthermore, by becoming increasingly involved in program-by-program decisions in controversial areas, the board sacrificed its role as a buffer between the government and program makers responsible for creating and delivering programming for the public. Because of this, many stations have come to lose respect for CPB leadership and to regard the corporation as a government agency.[15]

The "second major lesson", according to the Commission, was that:

> [T]here is potential strength in stations working together. They developed an important role for themselves as programmers for the system, and continued the public affairs presence on the system. They also developed strong

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[14] House Report No. 95–1178, May 15, 1978, (95th Cong. 2d Sess.) "Public Telecommunications Financing Act of 1978", at 35–37.

[15] Carnegie II pp. 48–49.

> leadership when they needed it, in opposition to what they viewed as a move to centralize under a politically vulnerable statutory organization.[16]

The Commission concluded that the events of the early 1970s, though the most dramatic, were not atypical:

> While considerable emphasis had been placed on the destructive events of 1972–73, the failures of CPB are not ancient history. The Corporation today continues to operate with low effectiveness and credibility in the programming and leadership spheres. Its present board continues to display a direct operating presence in programming rather than provide insulation for system activities. While some of these problems are the legacy of the early 1970s, the institution as a whole seems enmeshed in a bureaucratic stalemate with much of the rest of the system.[17]

The Congress and the Executive branch, in considering the 1978 public broadcasting amendments to the Act, shared the general thrust of these concerns. President Carter, in a 1977 message to the Congress on public broadcasting, observed that "at present, CPB itself often chooses which individual programs or series as a political insulator". He proposed that the CPB return to the "block grant" approach that it had initially employed.[18]

In its report on the 1978 legislation, the House of Representatives Committee on Interstate and Foreign Commerce applauded the CPB Board's recent approval of "a new system for program funding which would minimize bureaucratic duplication and remove the board from decisionmaking in regard to individual programs or series", and recommended "that a system of this type be implemented as rapidly as possible." [19]

The Senate Committee on Commerce, Science, and Transportation observed in its report that:

> Effective funding of program production is the paramount function of the Corporation. The greatest source of friction between CPB and PBS involves the propriety of CPB involvement in the individual program development and selection process. The Committee is advised that the Corporation recently has undertaken a thorough review of its television program funding procedures, in consultation with PBS and other parties, with a view toward reducing or simplifying those procedures. The Committee welcomes the initiative of the Corporation and will continue to monitor its progress toward reducing excessive involvement in specific program details better undertaken by entities outside the Corporation.[20]

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[16] Id. at 49.
[17] Id. at 75.
[18] President's Message on Public Broadcasting, October 6, 1977, quoted in House Report 95–1178, at 3.
[19] House Report 95–1178, at 35.
[20] Senate Report No. 95–858, May 15, 1978, (95th Cong., 2d Sess.), "Public Telecommunications Financing Act of 1978", at 17.

The operation of the Program Fund as a quasi-autonomous unit under the CPB umbrella from 1980–88 seemed to reduce, but not eliminate, controversy about the Board's involvement in programming. As new members joined the Board, they often questioned the structure that they inherited (though they have not voted to overturn the proposition that the Board should not make individual program funding decisions).[21]

In the early 1980's, one member roundly condemned the initial broadcast of the documentary series *Frontline,* and he has been perceived since as a persistent advocate for a lower priority for the funding of that series in particular and public affairs programming in general.[22]

Later, another member used the occasion of a Board meeting for a spirited attack on the *American Playhouse* presentation of "Concealed Enemies", a critically-acclaimed dramatization of the Alger Hiss case.[23]

In 1985, the Board vetoed a planned visit by a delegation of public broadcasters to the Soviet Union to discuss potential program exchanges, with Board members asserting that the delegation could not be trusted to succumb to "disinformation" propagated by the Soviet authorities. (President Reagan, taking a more vigorous view of the intellectual capacity of Americans to distinguish free expression from propaganda, shortly thereafter proposed much wider exposure of the Soviet people to the free expression of the principles and the ideals of the American people.) [24]

During the same period, complaints were heard that the Chairman of the Board, notwithstanding concerns about the propriety of Board involvement in program funding decisions, attended meetings of panels advising the Program Fund Director on pending grant applications or program reviews.[25]

In 1986, a Committee of the Board proposed that the CPB undertake a "content analysis" of all documentaries distributed by PBS over a year-long period, to determine whether they were "balanced and objective". The proposal embroiled the CPB in controversy and was withdrawn.[26]

Most of the foregoing discusses the involvement of the CPB *Board* in program decision-making. CPB management, over the years, has never been reluctant to suggest that, while it might be awkward for the *Board* to be involved in the selection, funding, supervision, and evaluation of individual programs, there need be no concern about the *staff's* being involved in the details of program conception and production—notwithstanding the staff's proximity

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[21] *Current,* May 24, 1983, "The Board wants More Say on Programs; Directors Rebellious Against Insulation of CPB Fund." *Current,* May 30, 1984, "Heat-shield Role Under Fire; CPB Board Member Calls for Control Over Program Content."

[22] *See e. g,* Current May 24, 01983; "Sonia Landau; The Unesay Chair of CPB *Washington Journalism Review,* January, 1986; "The Big Squeeze on Public Broadcasting", *Columbia Jounalism Review, January/February, 1986.*

[23] *Current May 30, 1984 and January 27, 1987; Washington Journalism Review,* January, 1986; *Columbia Journalism Review,* January/February, 1986.

[24] *Channels,* July/August, 1985, "Public Broadcasting's Unholy Link to Politics"; *Washingtonian,* February, 1986, "Uncivil Wars"; *Washington Monthly,* "Prime Time Pablum; How Politics and Corporate Influence Keep Public TV Harmless", January, 1986.

[25] *Columbia Journalism Review,* January/February, 1986.

[26] *Current May 27, 1986 and January 27, 1987; "Proposed Analysis of Public TV Sparks Debate", Los Angeles Times,* July 8, 1986.

to the Presidentially-appointed Board and the CPB's responsibility for shielding, not conducting, the program decision-making process. Thus, the staff has frequently asserted a right to require that the producers of individual programs and series submit (for the CPB staff's review and approval) script outlines, scripts, rough cuts, fine cuts, and other program elements throughout the production process, that the CPB approve changes in budget line items, underwriters, program talent, or any delegations of duties by the producer, and that CPB issuance of progress payments be contingent upon receipt and approval of these production elements of the works-in-progress.[27]

Most observers outside the CPB—most certainly those engaged in the production of programs—have not agreed that detailed intrusion into the program production process of the sort which would be impermissible for the Board is somehow perfectly acceptable for the staff. The acts of the management are the acts of the CPB, and by management action it is no less the case that the CPB, which is prohibited from producing programs and is charged with carrying out its functions in ways that will "most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content . . .", is nonetheless supervising in detail the work of those producers whom it chooses to fund.[28]

Finally, recent internal changes at the CPB will permit the Board and the President to exercise more control over program funding decisions. For the past 8 years, the Program Fund Director reported to the Board what programs had been funded after CPB program funds had been committed. This has now been changed.

At the October 1987 Board meeting, the CPB voted to expand the responsibilities of the Vice President, Telecommunications, and to change its title to Senior Vice President. In addition, the Program Fund Director will report to the new Senior Vice President, who in turn reports to the President. At the July 1988 Board meeting, the Board gave the President authority to commit the program funds. The effect of these changes will be to vest increased responsibility in the President for programming decisions and reduce the independence of the Program Fund Director. The CPB publicly claims that these changes are designed to decrease the likelihood of the Board influencing programming decisions. However, Board members have also stated that they have more influence over the President and therefore will have more influence over program funding decisions.

Maturity of Local Public Broadcasting Operations.—Since the CPB was created in 1967, the public broadcasting system has grown

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[27] *See e.g.*, CPB Production Agreement, "The Green Limousine", February 8, 1985; October 17, 1985 letter from Gary Knell, General Counsel, WNET, to Peter Fannon, President of NAPTS, outlining concerns with CPB's procedures; May 8, 1986 letter form James Fellow, President, Central Educational Network, to CPB President Martin Rubenstein.

[28] It has been argued that the public stations are also susceptible to political influence; however, "the sheer numbers, geographic separation, diverse editorial policies and separate governing bodies make them less subject than the CPB to pressure from Washington politics." *See*, Richard Marks, "Restructuring Public Broadcasting", *Public Telecommunications Review*, Vol. 4, No. 6, 1976, at 7-8. In this article, Mr. Marks proposed that the CPB should have no control over funds devoted to programming because the CPB, "as the direct link to Congress is the most subject of all public broadcasting's institutions to governmental pressure." Id. at 7.

and matured. In 1967, public broadcasting consisted of a "disparate collection of stations" that were not interconnected. Since then, the number of public broadcast stations has doubled, and all of the television stations and most of the radio stations are interconnected. Today, public broadcasters are able to develop and share their programming, increasing the diversity of programming available to the public. In addition, as discussed below, public broadcast stations already aggregate their funds to support existing national programming and develop new national programming.

Local Support Has Grown.—Further evidence of the maturation of the system is the fact that the Federal contribution to public broadcasting programming has been decreasing in proportion to the non-federal support for public stations. Federal support constitutes less than 15 percent of the total funding for public broadcasting. This is due, in part, to lower than expected authorizations in the early 1980's but primarily to increases in individual and corporate contributions.

The Long Term Trend Has Been To Shift Allocations to Local Stations.—Recognizing the maturation of the system, Congress and the CPB have been shifting larger and larger portions of the Federal support to the stations. In the early 1970's, the CPB began distributing a substantial percentage of its funds to stations in the form of grants (now called Community Service Grants (CSGs)) to be used as the stations deemed appropriate. In 1981, Congress codified the CPB's practice of giving stations unrestricted CSGs.

After one year of consultation, discussion, and improvements, on May 22, 1985, the public radio stations overwhelmingly approved the NPR Business Plan, which called for all Federal radio dollars to be sent directly to the public radio stations beginning in fiscal year 1987, except for a limited amount of money which would remain in a competitive program fund administered by the CPB. This fund was designed to support production of innovative and experimental national radio programming, as well as programming that meets the mandate of public broadcasting to serve minorities and other under-represented groups, including the work of independent producers.

Shortly thereafter, after consultation with the public radio system, the CPB during its annual review process adopted elements of the business plan with some modifications and allocated radio's share of the appropriation accordingly. The CPB allocated 93 percent of the Federal funds directly to qualified public radio stations: 71 percent in the form of unrestricted CSGs and 22 percent in National Program Production and Acquisition Grants (NPPAGs) holding the remaining 7 percent in a program fund to be administered by the CPB. Historically, the CPB, by allotting national programming funds itself, had determined the type of programming to be produced and the producer. Under this new funding mechanism, the CPB broadened the station's discretion by permitting them to choose both the program type and the producer, so long as the funds were used for national programming. The CPB considered the combination of funds reserved in the programming fund and those allocated to NPPAGs sufficient to meet its statutory obligation to fund national programming.

The Reported Bill

Declaration of Policy.—The declaration sets forth the primary concerns that the Act was created to address. As discussed above, to a large extent, the original goals of the Act have been achieved. The Committee believes that the quantity and quality of programming has improved significantly in the last 20 years. There remain, however, large segments of the population that are not adequately served by public broadcasting.[29] Consequently, the Committee believes that in the coming years we need to encourage the production of programming involving creative risks and designed to serve unserved or underserved audiences, including children and minorities.

The purpose of this language is to reinforce the fact that a main reason for Federal funding is to serve those needs that are not being met in the marketplace. The new policy sets forth the overall goals of the Act and imposes guidelines, not specific obligations, on the CPB. In addition, this new policy will help ensure that the other new provisions maintain, if not increase, the amount of programming directed to children and minorities.

Section 396(k)(3)(A)(iii) Radio and Television Allocations.—Currently, the Act provides that not less than 50 percent of funding allocated to radio go to the stations and not more than 50 percent be devoted to programming. The CPB and the public radio stations have jointly determined to allocate the radio funds as follows: 71 percent to stations in the form of unrestricted grants; 7 percent to a program fund administered by the CPB; and 22 percent to stations for national programming. The bill as reported codifies the current allocation scheme with only minor changes.

The funding for public television is reallocated to follow the public radio model. Seventy-five percent of the funds available for public television will continue to be distributed to public television stations in the form of unrestricted grants. Of the remaining 25 percent, 5 percent will go into a program fund to be administered by CPB, and the remaining 20 percent will be distributed directly to the stations for national programming, with emphasis to be given on programming addressing the needs of certain types of audiences as discussed later in the report.

The Committee has watched the progress of the public radio system as it has undergone a major change in its financing structure over the past 2 years. The Committee supports the changes undertaken by the CPB in consultation with the public radio system and believes they are in the best interests of public broadcasting and the public it serves. Consequently, the Committee has decided to codify the existing financing structure and adopt a similar structure for television. The Committee realizes that by its actions it places 93 percent of the public radio allocation in the hands of the radio stations and 95 percent of the television finding in the hands of the public television stations. It also understands that this action may raise some concerns. The Committee, however, believes on balance this is the best policy. The local licensee, after all, is

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[29] S. Hrg. 100-604.

responsible for what goes out over the air and should have the financial resources to make programming decisions.

The primary purpose of all funds allocated under this subsection is to provide money dedicated to the production and acquisition of quality programming from diverse sources intended to serve a national audience.[30] This money is also intended to include programming designed for large segments of the population or specific national communities of interest.

Much of public television's hallmark national programming—such as *American Playhouse, Frontline, Great Performances, The MacNeil-Lehrer Newshour,* and *Wonderworks*—is financed jointly by the CPB and the public television licensees. Such joint funding of major national programming presently accounts for the preponderance of expenditures from the CPB Program Fund. Under this legislation, 80 percent of the funds heretofore expended through the Program Fund for continuing series would be instead distributed to the stations, and the stations would assume full responsibility for the continuing financing of such series.

The Committee is confident that the public television and radio stations will aggregate their national programming grants in order to continue financing such programs of outstanding quality and national stature (although, of course, there would be no requirement that stations finance any particular series, nor expectation that they would continue to finance any program indefinitely). The Committee has no reason to expect that stations would permit any diminution in the character, quality, and scope of their national program services, and does not contemplate that stations would do so. In fact, it strongly believes its confidence is well founded.

Public broadcasting's national program services are serving the American people exceptionally well. Public radio's news, information, discussion, cultural, and music programming, and public television's public affairs, performing arts, science, children's and educational programming enrich the lives and advance the aspirations of tens of millions of viewers and listeners every week. The Committee does not seek to suggest that a change is necessary in the composition of public broadcasting's national program services, but rather to effect a change in the mechanism for the financing of those services.

It is not surprising that the public broadcasting stations would be the most vigorous supporters of strong and effective national programming, for it is the stations and their audiences that would suffer most if their programming were weak and unimaginative. The public television stations have a consistent history of aggregating their own funds for programming. Station funding of national programming through the Station Program Cooperative (SPC), now entering its 16th year, has grown from modest beginnings to almost $50 million in 1988. In the most recent "market", aggregated station financing substantially exceeded CPB funding for the major series cited previously, and station funding sustains many other continuing series which receive no CPB support. In addition to the

[30] The Committee intends that the shift in responsibility for national program support will not interfere with public broadcasting's exemplary services to the handicapped, such as provision of closed captioning of nationally distributed programming for hearing-impaired viewers.

SPC, stations aggregate funds for PBS program scheduling, interconnection, promotion and support services, and for the Program Challenge Fund, the Program Development Fund, and the Station Independence Program. In fiscal year 1989, the television stations will aggregate at least $83,500,000 for such national services, an amount more than twice the level of the CPB Program Fund and equal to more than 70 percent of their CSGS from CPB.

The public radio stations do not have the same length of experience in aggregating funds for national programming, but two years ago instituted a system of NPPAGs. As discussed above, the practice of distributing radio NPPAGs was adopted after carefully reviewing the radio experience and their requirements. The stations are now aggregating funds for the support of local and national programming, interconnection, and support services from a diverse group of suppliers.

Although the track record gives reason for confidence in the stations' judgments, the Committee believes safeguards are necessary. The Committee is not disposed to impose a rigid requirement that national program funds be aggregated in any particular manner—that is a decision better left to the judgment of the licensees. The Committee does intend, however, that the national programming grants to stations under these provisions should be employed solely for the production and acquisition of national programming, and that they should not be employed for less-than-national programming, nor to replace funding already provided by stations for national programming from existing sources. (In this latter regard, consideration might be given to the establishment of national "drawing accounts" or similar mechanisms to enable stations to direct the application of these funds to national programming without need of the funds' passing through the budgets of their parent institutions.)

Expenditures of the national programming grants should be at the discretion of the licensees. With the concurrence of the licensees, however, the CPB should establish a formula and criteria for distribution of the grants to ensure that the funds will be employed for the statutory purposes.

The legislation makes its intent clear by restricting stations' use of these funds "solely . . . for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience." In thus defining "national programming", the Committee has in mind programming that is financed and produced with the expectation that it will be made available to audiences nationwide and is in fact distributed to and used by a substantial number of public stations in all parts of the country. Programming which is not financed with the express intent and expectation that it will be distributed to and used by public television or radio stations nationwide would not qualify as "national programming". Thus, a station could not employ its national program grant for the production of a program based merely on the hope that the program might later be accepted for national distribution. However, if a "local" program is later acquired for national distribution it then becomes eligible for funding with these grants allocated for national programming.

Similarly, individual station acquisition of a program not financed or produced initially for the purpose of national distribution would not qualify as a "national program" for the purpose of these grants unless it becomes part of a national program offering (although acquisition of program material deemed suitable for inclusion in a public television national program series would qualify). Stations which wished to do so would have the option as they do now to purchase programs from commercial syndicators; but it is not the Committee's intent that stations would use their national programming grants for that purpose: the fact that a commercial program was "offered nationally" to public television stations by its syndicator would not qualify it as a public television program for this purpose. These funds should be used to fund programs that enhance public broadcasting. As noted by Committee members both at the March 1988 hearing and the executive session on June 28, 1988, the Committee is very concerned that Federal funding be used for programs that improve the quality of public broadcasting's offerings.

In order to qualify as "national programming", the program or series must be made available on reasonable terms and conditions to a significant number of stations in all parts of the country. A program offered only to a limited group of stations would not qualify. The fact that a program is distributed via satellite and is thus technically capable of reception by all stations does not alone make it a "national program", nor does the fact that a few stations in different parts of the country use the program. A program for a State network would not qualify, nor would a program of peculiarly regional interest, nor a program of interest only to a small number of stations. Public television's "regional" networks distribute programs to participating stations in all parts of the country, as well as programs of more particular interest within their own regions; national programs offered by "regional" organizations could qualify for the use of these funds.

The Committee is confident that the public television and radio licensees will not dissipate these funds on programming of limited interest or appeal, but rather, will recognize that they have been entrusted with responsibility for the stewardship of a valuable resource and will aggregate these funds effectively for the support of national programming of the character and stature that have come to identify public television and radio at their best. In this regard, the Committee understands that the public television licensees are planning to work through their national membership organizations to identify the methods most likely to achieve this purpose. The Committee applauds that initiative and expects that CPB will give great weight to the licensees' conclusions in its administration of these funds.

The Committee's confidence that the stations will spend the additional funds responsibly is based on the evidence that public television and public radio, without a statutory mandate, have aggregated funds for national programming. The reason the stations aggregate funding now is because national programming is an important part of their schedules. Further, as discussed above, the CPB is charged with the responsibility of monitoring the expenditures. The CPB currently audits stations and producers who are awarded

Federal funds and thus has the capability to ascertain how the stations are spending the national program grants. The auditing obligations of the CPB under the Act are limited to review for financial regularity and not for program content or other matters.

Section 396(k)(3)(B)(i) CPB Program Fund.—Under the current section 396(k)(3)(B)(i) of the Act, the CPB is permitted to make grants or contracts for the production of radio and television programming, and a substantial amount of the funding must go to independent producers. The changes in S. 2114 as reported to this section are designed to ensure that substantial portions of the monies in the Program Fund are awarded to the producers of national educational children's programming and programs addressing the needs of minorities. The language regarding independent producers remains in the statute. The reported bill also limits the number of years the CPB can support an ongoing program series to 4 years and deletes the reference to contracts.

The goal of this provision is to ensure that funding for educational children's programming and programming directed to minorities continues as a priority of the Program Fund. This language is not intended to limit the Program Fund to those areas, but to ensure that the CPB is responsive to the needs of children and minorities as well as the needs of those served by the independent productions. The CPB continues to have the discretion to determine what types of programming are not being produced by the system and focus on those areas. In implementing this section, the Committee expects the CPB to take into account the different ways people use radio and television. For example, public radio may not be as efficient a medium for children's programming as television.

Subsection 396(k)(3)(B)(i) is amended to alter the purpose of the Program Fund administered by the CPB. Read in conjunction with the new purpose provision of 396(a)(6), this fund is intended to be used to fund new programming, that has been carried on public broadcasting stations for 4 years or less. The Committee recognizes that it often takes several years for a program to gain viewers or listeners and raise outside support. Thus, the provision provides that CPB funding must cease once a program has been on the air for 4 years.

The Committee encourages public television to maintain no less than the present quality of national educational programming for children. The Committee has every confidence and expectation that public television's combined effort, through the CPB Program Fund and the stations' National Program Grants, will maintain at least the same emphasis on programming for children, particularly educational programming, that has been the case through the CPB Program Fund.

The provision prohibiting the funding of programs for more than 4 years is designed to ensure that the CPB's funds are continually used to promote new programming. Four years is a sufficient amount of time for a program to develop an audience and seek other sources of funding.

The changes under this subsection are intended to further insulate programming decisions and choices from any type of political interference. The legislation would amend sections 396(k)(3)(B)(i) and 396(g)(2)(B)(ii) to provide that the CPB will "make grants" for

the production of public radio and public television programs rather than "make grants *and contracts*" (emphasis added) for such purposes. The CPB is prohibited by the statute from "producing programs, scheduling programs for dissemination, or disseminating programs to the public." Nonetheless, the CPB has maintained a substantial programming staff. The public broadcasting producers have complained that CPB often seeks to exercise detailed supervision of the content of programs it is supporting, requiring, for example, that producers of works in progress submit rough cuts for review and approval by the CPB before progress payments can be made, or suggesting changes in talent or in the producers' approach to the subject.

The Committee views the exercise of such detailed review of program content as more in keeping with the role of an executive producer than that of a congressionally-chartered entity charged with facilitating the development of public broadcasting programming. The Committee believes that the CPB should function as a grant-making organization or foundation that makes grants to talented producers and gives them the creative freedom to pursue their craft rather than one of a programming company which contracts for programs to be produced according to its specifications. The CPB should not seek to perform through the exercise of its contracting powers the role of producer that it is prohibited by law from performing directly.

The Committee is confident that both public radio and public television will use the National Program Grants responsibly. As discussed above, both public radio and television are committed to the continued development of national programming. This is evidenced by the fact that both have aggregated funds for national programming voluntarily. Further, the CPB has the ability to monitor the use of the funds. The CPB presently audits the funds it distributes to stations, producers, and all other recipients of CPB funds. The Committee expects that while the CPB will require stations to demonstrate that these funds are devoted to national programming, the CPB will not use this authority to influence, evaluate, or determine program content.

National Children's Educational Programming.—The language in subsection 396(k)(3)(B)(i) of the Act establishes general directions for the award of program grants. The revised provision in the reported bill contains language providing that a substantial amount of the fund shall be used for new national children's educational programming. This type of programming clearly has not developed in the marketplace, and it is the type of programming at which public broadcasting excels. The Committee fully expects that the relative emphasis on such programming in the CPB Program Fund will continue undiminished. In addition, because the legislation provides for National Program Grants to stations, the stations will have a significant capacity to aggregate funds for the financing of national programming. Although this fund will be split between the CPB Program Fund and National Program Grants, the Committee expects that the CPB and the stations will ensure that the percentage of the funds devoted to new national children's educational programming remains constant or increases.

To further ensure this occurs, the Committee directs the CPB to report to the Committee immediately if it finds that the percentage drops below the current level. The Committee also wishes to make it completely clear that the inclusion of statutory language regarding new national children's programming in no way means that the CPB or the stations should reduce their commitment to continuing children's programming.

Minority Programming.—This section also includes language concerning the need for substantial commitments to programming addressing the needs of minorities. Last year, the CPB awarded $800,000 to the 5 minority consortia, and the CPB and the public television stations devoted a combined total of approximately $3 million to programs addressing the needs of minorities for both new and continuing programming. This is woefully inadequate. There are 29 million blacks and 18 million Hispanics in the United States. Those two groups alone constitute approximately 20 percent of the population. This figure does not take into account the other minority groups such as Native American Indians, Asians, and Alaska Natives. Further, this percentage is increasing at a rapid rate. Thus, the need for programming addressing those audiences, including foreign language programming, should be a primary concern of public radio and television stations and the CPB. As the authorization levels increase in future years, the Committee expects both the CPB and the stations to increase their commitments to the development of program addressing the needs of minorities.

Independent Productions.—In previous years, the Committee has noted its expectation that a substantial share of the Program Fund resources be made available to independent producers. The work of independent producers enhances diversity and the quality of programming. It is clear that the CPB has not sufficiently met the Committee's expectation of substantial support for independent producers.

The new funding mechanism contained in this legislation will continue to offer the potential for substantial support for the work of independent producers. The Committee expects the CPB and the public television and radio stations to make adequate funding available to independent producers. Both the CPB and the public stations have an obligation to work with the independent producers to achieve this goal.

The Committee's objective is to help stimulate the development programming in this area. It wishes to make clear that the restriction on the use of CPB's Program Fund for any program series that has been funded and broadcast for 4 or more years is not intended to prohibit the disbursement of monies from such fund to an independent producer for the production of programming which may be exhibited as part of a long-running series and may have been partially funded by the stations.

Report to Congress.—In order to evaluate this new allocation structure, the CPB shall submit an annual report to Congress detailing the percentage of funds reaggregated by the stations for national programming, and the percentage of the NPPAGs and CPB Program Fund devoted to new children's educational programming, programming addressing the needs of minorities, and programming produced by independents.

Section 396(k)(i)(3) Interest Income.—Revised section 396(k)(3)(A)(i) would direct the CPB to allocate all appropriated funds and interest accrued thereon by the specific statutory allocations made in all sections of the Act. Under existing law, interest that accrued on the amount appropriated has been reserved for the CPB to be used at its discretion on system support activities. Under this legislation, except for revised section 396(k)(3)(A)(i)(I), all interest accrued on the appropriated funds would follow the statutory allocations.

Section 396(k)(3)(A)(i)(I) Administrative Expenses.—Currently, the CPB is permitted to spend on administrative expenses up to 5 percent of the total funds allocated. In recent years, however, the actual percentage the CPB devotes to administrative costs has been decreasing. Last year, for example, the CPB devoted only 4.2 percent of the funding to administrative expenses.

The Committee has viewed with satisfaction the Corporation's efforts to keep its administrative costs below the previous 5 percent statutory limit for the past several years. In the early 1980's when the appropriation levels were either being reduced or funded at a constant level, it was necessary to provide a set percentage of the funds for the CPB's administrative expenses. Since fiscal year 1984, the appropriations have been consistently rising, and the CPB has done a relatively good job of keeping its administrative expense levels in line with the demands of the public broadcasting community.

The Committee believes that given this recent history it is now desirable to remove this percent set-aside and allow the CPB's administrative expenses to increase at a rate equal to 104 percent of the previous year's expenses. This new formula applies to the year of enactment of this legislation, fiscal year 1988, and expended funds means monies actually spent. This action will reserve the largest share of the Federal appropriations for the production and acquisition of national programming—the primary reason for the funding.

In addition to removing the percent set-aside for administrative expenses, the Committee directs that all administrative expenses of the CPB, its Board of Directors, consultants, contract employees, panels, planning, corporate communications, international activities, and other administrative expenses incurred by this bill shall be paid for from funds under section 396(k)(3)(A)(i)(I). No funds available to the CPB under section 396(k)(3)(A)(i)(II) or any other section of the bill may be used for any administrative costs of the CPB, its Board of Directors, consultants, contract employees, panels or other advisors for any other administrative or accountability function of the CPB.

Section 396(k)(3)(A)(i)(II) System Support.—Currently, the CPB is required to devote "not less than 5 percent of" the total funding allocated to it for system support, including satellites, interconnection and operation, and royalties. Under the reported bill, the percentage available for system support is raised to 6 percent. Funding at the level of 6 percent will enable the CPB to continue its funding at existing levels and increase the funding devoted to those services specified in the provision.

The changes in section 396(k)(3)(A)(i)(II) of the Act are complementary to the recent change in focus adopted by the CPB Board

at its meeting on May 17, 1988 and are intended to focus the CPB's activities and financial resources toward the enhancement of the quality and diversity of video and audio programming services which reach all Americans.

The new language requires the CPB to spend the money allocated in this subsection on satellite capital costs, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations for public radio and television. The CPR's budget for fiscal year 1989 includes $5,233,000 for television interconnection; $3,540,000 for music royalties; and $39,000 for "capital assistance projects." The total, $8,800,000, is well within the the allowance of 6 percent ($14,600,000) of the funds for system support. The Committee encourages the CPB to use some of this money and other funds available for this purpose to interconnect the smaller public radio stations around the country that want this service. These new interconnected stations will enjoy the twin benefits of gaining access to the programming available through the public radio satellite system and sharing their unique program services with audiences around the country via the satellite.

Nothing in this provision should be interpreted as preventing CPB and public radio and television stations from entering into voluntary agreements to share any or all of these fixed costs on any other basis, provided the agreement does not violate the statutory limits.

Funds remaining after payment of the costs set forth in the statute should be spent on services that public radio and television stations cannot efficiently perform themselves. CPB currently uses funds allocated to system support for professional development, training, research, and promotion of public radio and television programming among other things. The Committee supports these activities but also recognizes that CPB, in consultation with the public broadcasting community, is in a position to determine which of these services public broadcasting needs. The Committee does not intend that the CPB must perform these activities itself, but should support activities within the public broadcasting community and their national organizations where that is an efficient way to proceed.

CPB estimates that, in fiscal year 1989, its administrative expenses will total $9,600,000, or approximately 4.2 percent of the appropriation. This is well within the present requirement that "not more than 5 percent" of the appropriation shall be available for administrative expenses of the CPB. Currently, other portions of the CPB budget, including the television and radio program funds and the category of system support activities, may contain funds not included within the $9,600,000 figure. In the future all activities of the CPB, including the administration of the program fund selection panels, newsletters, media relations and promotion, its corporate contingency fund, training, research, policy development and planning, international and contracting activities, and all other categories of the staff activities must be paid out of the 104 percent of the previous year's expenses allowed for CPB administrative expenses.

Section 396(k)(6) Small Station Assistance.—Under section 396(k)(6) of the Act, the CPB is directed to provide assistance to all

public television stations and make unrestricted grants to eligible radio and television stations. CPB criteria are designed to ensure that stations provide high quality programming and operate the facilities professionally. For example, 2 of the radio criteria require a station to receive non-Federal funding of a least $150,000 and have 5 full-time employees. Under the bill as reported, the CPB must provide assistance to small stations in underserved communities, where those stations are the only broadcast outlet in a particular area without consideration of the current criteria.

The change in this provision is to reinforce the Committee's interest in expanding the reach and service of the public radio system. Currently, there are smaller, less financially well-off stations around the country providing an important service to their local communities that due to the economic circumstances of their localities cannot meet the qualification standards of CPB. This provision has been revised to ensure that smaller stations, including minority stations and stations on Indian reservations, which provide the *only* broadcast service to a community, receive some assistance from the CPB. Often these stations serve communities with limited economic potential to support a full service public radio station. These communities, for reasons totally beyond their control, may never qualify under present CPB standards but nevertheless should benefit from the services provided by public radio and money provided by Congress. They also can contribute their special brand of information and cultural programming via the public radio satellite interconnection system to the rest of the country.

The Committee encourages CPB to determine what types of assistance will best serve these small communities. For some stations additional funding might enable them to share in the interconnection system or increase the quantity and quality of programming provided.

The CPB also should examine the unserved and underserved areas of the country and see where a contribution of CPB's support can enhance service to these unserved and underserved audiences. In addition to areas of the country where there is no public radio service, there are large communities or metropolitan areas with diverse populations that cannot be adequately served by one or even two public radio stations. To serve the specialized interests of large segments of the population that are not being met requires both creation of new stations and programming of interest to these people.

The Committee did not make major changes in this section because it believes that the CPB, in order for it to meet the needs of competing interests and audiences needs some element of discretion. It is the Committee's understanding that the CPB is currently reviewing the criteria used to distribute community service grants to determine how to expand the number of radio stations that qualify for assistance. The primary purpose of Federal funds is production or acquisition of programming from diverse sources designed for a national audience. Another important objective is to expand the reach of the public radio system to unserved and underserved audiences around the country. The Committee will continue to monitor the priorities set by the CPB and the allocation of re-

sources by both the CPB and the public radio stations in meeting these twin objectives.

Public Broadcasting Service Scrambling.—Section 9 of the reported bill permits PBS to scramble its programming provided that it always has at least one clear "feed" (signal) of every program in its National Program Service accessible to satellite dish owners. PBS has five time-zone feeds of its programming. PBS testified at the Subcommittee's July 1987 hearing on S. 889, the Satellite Television Fair Marketing Act, that when PBS began to scramble, dish owners who have the VideoCipher II (VC II) decoders would be able to receive the PBS signal without paying any additional fee. In addition, PBS stated that it would keep one, non-stereo program feed of its National Program Service accessible without a decoder.[31]

The Committee decided to include this provision because of its concern that PBS might scramble its National Program Service, preventing home dish reception. In April of this year, PBS began scrambling certain transmissions using the VC II system. PBS is using the VC II technology as a cost-effective means to provide its local member stations stereophonic sound and other technical enhancements. The technology would replace the "DATE" digital audio for television system developed by PBS in the 1970's. The equipment for this system is no longer readily available and is many times more costly than comparable VC II equipment.[32]

PBS conducted a two-year investigation of various stereo delivery systems before selecting the VC II system. This was determined to be 50 percent less expensive than the next closest alternative. The cost of switching to the VC II technology is expected to be one-seventh the cost of expanding the DATE system. In addition to the cost advantages, encoding sound into ditigal signals retains sound quality through various stages of signal processing and satellite transmission. Thus, today a primary purpose of encoding sound into digital signals is to avoid degradation of the signal. In addition, this technology is expected to bring stereo programming to millions of Americans in the coming years.

In today's market, the need for stereo programming is not readily apparent because programmers are just beginning to provide stereo programming and many television viewers do not have receivers capable of providing stereo television audio. While fewer than 20 percent of the PBS programs are now furnished in stereo, this is rapidly changing. PBS transmits approximately 150 hours of stereo programming each month. Beginning the next television season, PBS has requested that all of the programming submitted to PBS be in stereo. Current market trends also indicate that, in the coming years, all new televisions will be capable of providing stereo audio. It would be imprudent for public broadcasting to wait until everyone has stereo receivers before making its programming available in stereo.

Digital audio encoding will make stereo and other improved audio services freely available to the increasing number of home dish owners who have VC II decoders, as well as to viewers of

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[31] See July 31, 1987 Scrambling Hearing, Statement of Michael E. Hobbs, Senior Vice President, Policy and Planning, Public Broadcasting Service.

[32] *Id.*

public television stations, but will interfere with reception by home dish owners who have not yet installed decoders. PBS assured the Subcommittee that it recognizes this problem, and that its Board of Directors has therefore adopted a policy to maintain a clear transmission of PBS's National Program Service. According to its policy statement submitted for the record in the July 1987 hearing, PBS encodes programs in its National Program Service (which is intended for the general audience), its closed-circuit transmissions to its local member stations, and its proprietary user-financed services, but maintains at least one clear, unencoded feed of every program that is transmitted in the National Program Service.[33]

The Committee appreciates PBS's commitment to maintaining a clear feed of its general audience programs while pursuing the development of digital audio technology. That policy will help to make improved public television services available to the millions who watch terrestrial public television broadcasts and to the increasing number of home dish owners who have installed decoders. It will also permit the maintenance of service to the majority of home dish owners who do not yet have decoders. The maintenance of a "clear" transmission accessible to home dish owners and the provison of schedule information for that service will involve some additional cost to public television. That cost has been taken into account in this authorization. The Committee has been advised by PBS that it is taking steps to (1) place all of the clear National Program Service programs on one channel, (2) keep that channel entirely in the clear to the maximum extent possible, and (3) disseminate satellite scheduling information on the air and in writing that will assist home dish owners in locating the clear feed of the National Program Service programs.

Some consumers have contended that PBS should not be able to scramble at all because it is funded in part by Federal funds.[34] The Committee believes that a prohibition on scrambling would be too restrictive and unnecessary. The language in the bill ensures PBS will be permitted to offer state-of-the art service and that home dish owners will not be deprived of any programming. The Committee further believes that it is especially important that public television, which is dedicated to serving the cultural, informational, and educational needs of all citizens, be made available as widely as possible, not only through traditional broadcasts, but through new technologies. PBS pioneered the satellite delivery of its program service to its affiliates in the late 1970's, which made possible the reception of public television service for millions of Americans who otherwise would not have access to a viewable public television signal.

The Committee does not wish to interfere with public television's outstanding record of technical innovation. As nearly as possible, all Americans should have access to the best service that public television can provide. The Committee believes that public television shares that commitment. The Committee also believes the PBS

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[33] Encoded National Program Service transmissions would be digitally encoded, and anyone with a VC II decoder would be able to receive the programming without prior authorization and without subscribing or paying for the service. Encrypted transmissions of proprietary services would be addressed to authorized users.

[34] See July 31, 1987 Scrambling Hearing, Statement of Diane Davis.

scrambling provision strikes the appropriate balance between the legitimate interests of the parties. It will monitor the advance of technology developments and the effects of this provision and will pursue any changes in the law that may be required.

Legislative History

S. 2114 was introduced by Senator Inouye on March 1, 1988, and co-sponsored by Senators Hollings and Danforth. It authorizes funding for the CPB and PTFP. A hearing on the bill was held on March 15, 1988, and 11 witnesses testified. Hearings on public broadcasting issues were also held on November 12, 1987 and April 27, 1988. On June 28, 1988, in open executive session, the Committee, without objection, ordered S. 2114 reported with an amendment in the nature of a substitute.

Summary of Major Provisions

As reported S. 2114 would:

1. Add a new provision to the declaration of policy stating that it is in the public interest to encourage the production of programming involving creative risks and to serve unserved or undeserved audiences, including children and minorities.
2. Authorize the following funding levels for the CPB: fiscal year 1991—$304 million; fiscal year 1992—$354 million; and fiscal year 1993—$404 million.
3. Authorize the following funding levels for the PTFP: fiscal year 1989—$36 million; fiscal year 1990—$39 million; and fiscal year 1991—$42 million.
4. Authorize a separate amount of $200 million to replace the public radio and television satellite systems.
5. Require that interest income earned on the appropriations be distributed in accordance with the allocation formula set forth in the statute.
6. Reduce the percentage of funds the CPB can devote to administrative expenses to 104 percent of the amount devoted to administrative expenses the previous year. This provision goes into effect upon the date of enactment.
7. Raise the percentage available for system support expenses (satellite interconnection and capital cost, program royalties, training, research) to a flat 6 percent of funds appropriated.
8. Codify the radio allocation formula to follow the formula currently used by CPB—70 percent of the ratio funds to the stations in the form of unrestricted grants, 23 percent of funds to stations for national programming, and 7 percent of the funds remaining at CPB in a competitive fund for programming.
9. Revise the television allocation formula to follow the radio model. Seventy-five percent of the funds available for public television would continue to be distributed to public television stations in the form of unrestricted grants. Of the remaining 25 percent, 5 percent would go into a program fund to be administered by the CPB, and the remaining 20 percent would be distributed directly to the stations for national programming.
10. Require CPB to devote a substantial portion of the monies in the program fund to educational children's programming and pro-

grams addressing the needs and interests of minorities, in addition to productions by independent producers. This provision also limits the nubmer of years CPB can support an ongoing program series to 4 years and deletes the reference to contracts.

11. Prohibit PBS from scrambling unless an unscrambled (clear) feed to its National Program Service can be received by home satellite dish owners without the use of a decoder.

12. Require the CPB to provide assistance to public radio stations that provide the only broadcast service to a community.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 13, 1988.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2114, the Public Telecommunications Act of 1988, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 28, 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2114.

2. Bill title: Public Telecommunications Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 28, 1988.

4. Bill purpose: The purpose of this bill is to amend the Communications Act of 1934 by reauthorizing both the Corporation For Public Broadcasting (CPB) and the Public Telecommunications Facilities planning and construction program. In addition, a Public Broadcasting Satellite Interconnection Fund is established by the bill. Finally, the bill would change the allocation of CPB funds.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Public Telecommunications Facilities, Planning and Construction:					
Authorization level	36	39	42	.....	.....
Estimated outlays	4	21	30	35	17

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Public Broadcasting Fund:					
Authorization level			304	354	404
Estimated outlays			304	354	404
Satellite Interconnection Fund:					
Authorization level			200		
Estimated outlays			200		
Bill total:					
Authorization level	36	39	546	354	404
Estimated outlays	4	21	534	389	421

The costs of this bill fall in Function 500.

Basis of Estimate: S. 2114, the Public Telecommunications Act of 1988, would amend the Communications Act of 1934 by reauthorizing both the Corporation For Public Broadcasting and the Public Telecommunications Facilities planning and construction program. In addition, a Public Broadcasting Satellite Interconnection Fund within the CPB is also established by the bill.

All authorization levels are stated in the bill. Outlay estimates of the Public Telecommunications Facilities planning and construction program reflect the current spending pattern of the program. Outlay estimates for the Public Broadcasting Fund and the Satellite Interconnection Fund reflect the current spending pattern of the CPB.

Authorization levels are assumed to be fully appropriated at the beginning of each fiscal year.

6. Estimated cost to State and local government: the Congressional Budget Office has determined that the budgets of state and local governments would not be affected directly by enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Namian.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation provides an authorization of appropriations for fiscal years 1991–93 for the CPB and 1989–1991 for the PTFP. The authorization levels will enable the CPB to expand the number of radio stations that receive assistance and ensure that the public broadcasting can replace its satellite interconnection system through which the majority of its programming is distributed. In addition, the authorization will enable public broadcasting to increase the amount of programming available to American citizens. Therefore, this legislation will ensure continued public broadcast

service and should result in a significant increase in the number of persons benefitting from this reauthorization.

ECONOMIC IMPACT

The bill, as reported, authorizes appropriations for CPB of $304 million for fiscal year 1991; $354 million for fiscal year 1992; and $404 million for fiscal year 1993. In addition, it authorizes appropriations for PTFP of $36 million for fiscal year 1989; $39 million for fiscal year 1990; and $42 million for fiscal year 1991. These funding levels are modest and are not expected to have an inflationary impact on the nation's economy.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

This legislation reauthorizes the existing CPB and PTFP programs. Therefore, there should be no changes in the paperwork requirements associated with these programs.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states the short title of the bill, the "Public Telecommunications Act of 1988".

SECTION 2.—PUBLIC TELECOMMUNICATIONS FACILITIES AUTHORIZATIONS

This section authorizes funding for the PTFP at the following levels: fiscal year 1989—$36 million; fiscal year 1990—$39 million; and fiscal year 1991—$42 million.

SECTION 3.—CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATION

This section authorizes funding at the following levels for the CPB: fiscal year 1991—$304 million; fiscal year 1992—$354 million; and fiscal year 1993—$404 million.

SECTION 4.—PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

This section adds a new paragraph (10) to section 396(k) of the Communications Act of 1934, establishing in the Treasury a fund, the Satellite Interconnection Fund.

New paragraph (10)(B) authorizes $200 million to replace the public broadcasting satellite system.

New paragraph (10)(C) authorizes the Secretary of the Treasury to disburse the monies in the Fund to the CPB.

New paragraph (10)(D) requires CPB to distribute all of the monies in the Fund and interest thereon to public radio and public television stations or national organizations designated by the stations to replace and refurbish their satellite interconnection systems and provides that none of the funds shall be used for the administrative costs of CPB.

SECTION 5.—FINDING WITH RESPECT TO CERTAIN PROGRAMMING

This section expands the goals of the Act to include encouraging the development of creative programming and programming serving unserved and underserved audiences, including children and minorities.

SECTION 6.—EXERCISE OF BUSINESS JUDGMENT BY THE CORPORATION

This section deletes the reference to "contract" in Section 396(g)(2)(B)(ii) of the Act in order to conform that provision to changes made by Section 7.

SECTION 7.—ALLOCATION OF CORPORATION FUNDING

Subsection (a)(1) requires that interest on funds allocated to the CPB must be distributed in accordance with the allocations set forth in the statute.

Subsection (a)(2) requires that the percentage of funds CPB devotes to administrative expenses not exceed 104 percent of the amount devoted to administrative expenses in the previous year. In addition, none of the funds designated for other purposes in this section can be used for administrative expenses.

Subsection (a)(3) increases the percentage available for system support to 6 percent. After covering the costs of satellite interconnection and royalties, if there are funds remaining, the CPB can devote the remainder to training, research, and promotion of programming.

Subsection (b) reallocates the funding for public television. Seventy-five percent of the funds available for public television will continue to be distributed to public television stations in the form of unrestricted grants. Of the remaining 25 percent, 5 percent will go into a Program Fund administered by the CPB, and the remaining 20 percent will be distributed directly to the stations for national programming.

Subsection (c) codifies the current scheme used by the CPB to allocate the radio funds. Seventy percent of the funds available for radio are distributed to the stations in the form of unrestricted grants; 7 percent remains at the CPB in a fund for programming; and 23 percent is to go to stations for national programming.

Subsection (d) deletes a provision in current law as unnecessary as a result of the changes in subsection (a)(3) referred to above.

Subsection (e) reflects the deletion of subparagraph (a)(3)(v) from the statute.

Subsection (f) sets forth how the CPB should disburse the monies in the radio and television program fund. It provides that the CPB must use a substantial portion of the funds allocated for independent productions and programs directed to children's educational needs and minority programming. It also limits the number of years the CPB can support an ongoing program series to 4 years. The amendment deletes the reference to contracts.

Subsection (g) deletes statutory language that applies to prior years and is no longer applicable.

Subsection (h) requires the CPB to assist radio stations in underserved communities to maintain and improve their service.

SECTION 8.—PROHIBITION AGAINST EDITORIALIZING

Section 8 deletes the sentence prohibiting public broadcast stations from editorializing because that provision has been found unconstitutional.

SECTION 9.—SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING

This section prohibits PBS from scrambling its programming unless it maintains an unscrambled transmission of its programming which is accessible to home satellite dish owners without decoders.

SECTION 10.—EFFECTIVE DATES

Subsection (a) establishes October 1, 1989, as the effective date for sections 5, 6, and 7, with the exception of subsection (a)(2) of section 7.

Subsection (b) establishes that the effective date for all of the remaining sections is the date of enactment.

ADDITIONAL VIEWS OF MR. BENTSEN

I support this legislation as reported by the Committee. I write separately to underscore my continued interest in the need for increased minority and children's programming on public broadcasting. I would like to see public broadcasters' commitment to programming that addresses the special needs of children and minorities increased in the coming years. There can be no more vital constituency than either of these groups, and in many ways they are the most vulnerable among us. Minorities, especially Hispanics, are the fastest growing segment of the national population. As Senator Inouye noted at the hearing on this legislation, the percentage of functionally illiterate adults is almost 20 percent for whites and more than twice that for blacks and Hispanics. In addition, 13 percent of all high school graduates are functionally illiterate. Moreover, a disproportionate number of the members of these communities are in dire need of health care services and information. These problems must change, and we should no longer tolerate them. We need to use every available tool at our disposal to reverse this phenomenon and correct it. I believe, as most of my colleagues do, that education and health information are interests of the highest order, and the Federal Government must assist the States in finding creative solutions to these problems.

One approach to addressing the education and health information needs of our children and minority communities is through the use of educational and instructional programming. Our public broadcasting system has the unique ability to provide educational and instructional programming directly to the home and to supplement the information provided to our schools and universities as well. I would hope that both the CPB and the public broadcasters throughout the Nation will consider this legislation as an opportunity to strengthen their commitment to programming that addresses the needs of children and minorities. With the increase authorizations set forth in this bill, public broadcasters should closely examine the educational interests of these communities and they should increase the level of programming aimed at addressing those needs.

In addition to the education and information needs of children and minorities, public broadcasting has the dual obligation to accommodate the broad diversity of our Nation and also to make this type of programming available to a general audience. In my judgment, public broadcasting has no more important goal than to reflect and to serve the diversity embodied by our society. This legislation presents a challenge to the public broadcasting community to put its house in order in terms of enhanced children's and minority programming. I believe it is up to the task.

LLOYD BENTSEN.

ADDITIONAL VIEWS OF MR. PRESSLER

I support public broadcasting and the unique service it provides to the American public. Therefore, I support continued public funding of this service. However, I am concerned about a recent development that threatens the availability of public broadcasting to all citizens.

That development is the scrambling of PBS transmissions. Since April, PBS has been scrambling its signals, often unpredictably. Indeed, instances have been documented where all of the satellite feeds have been scrambled at the same time, despite promises to keep at least one clear feed for satellite viewers. I have been told that this is an unfortunate accident occurring during the transition period only.

PBS has a Congressional mandate to serve the American public. *That includes satellite dish owners,* who often have no other means of receiving PBS, especially in rural areas. And this means *free,* unscrambled access to PBS's entire program schedule. The satellite dish owner has paid for this service through his tax dollars and therefore has a right to receive the service without having to pay to descramble the programming. PBS acknowledges this and has made certain promises to the satellite dish owner.

I would now like to reiterate those promises, as I understand them, for the record. First, PBS will maintain at least one clear feed at all times. That means there will be no more instances when all four of its feeds are scrambled simultaneously. Furthermore, I have been told that Channel 17 will be the primary clear feed, and that only in rare circumstances (maybe once every other week after midnight) will this channel need to be used to transmit a scrambled signal.

Second, another feed will be in the clear approximately half the time. This will provide for some viewer flexibility, considering that these feeds are sent to all time zones simultaneously.

Third, all programs in the PBS National Program Service will be available in the clear. Schedule information on both the clear and encoded feeds is being made available to the program listing services. Series will appear at regularly scheduled times. Scheduling information will also be shown on both the clear and encoded (through a barker system) feeds so that the viewer will know what shows are coming up next.

My support for this legislation is based on the belief that PBS will abide by its promises. The committee has included language requiring PBS to maintain at least one clear feed, but I felt it was necessary to elaborate my understanding of that requirement, which includes all of the above promises. An honest effort to perform accordingly should result in a complete, timely provision of clear programming to satellite dish viewers. This is what we expect.

The reason I feel so strongly that PBS's programs need to be easily available to all Americans is because I have such high regard for PBS. Rural satellite dish owners should not be denied this high quality programming simply because they are out of the reach of the broadcast stations. I will continue to follow this closely. Providing this service to all Americans is vitally important. Universality of service is essential. I understand that stereo programming can be sent without scrambling the signal, as is done with stereo FM radio and, if necessary, we may have to require PBS to switch to that type of system. That decision depends on how well PBS complies with the intent of Congress to keep all its programming readily accessible to the satellite dish owner.

LARRY PRESSLER.

ADDITIONAL VIEWS OF MR. WILSON

Public broadcasting provides important programming, both educational and entertaining, for people throughout our country. The public-private partnership that is public broadcasting has been a great success, bringing to the public programming of enormous scope and significance. Unfortunately, public broadcasting and we in the Congress have somewhat lost our way in defining the mission at hand: That federally supported public broadcasting is first and foremost a powerful means to help bring the uneducated and the disadvantaged into the American mainstream. Therefore, while I support reauthorization of funds for public broadcasting, I am compelled to file these additional views.

Many years of broad congressional support for public broadcasting, and the unanimous support S. 2114 received in the Committee, makes it abundantly clear that Congress will continue to provide significant funding for this important alternative to commercial broadcasting. Nevertheless, as we face an ongoing need to reduce federal budget deficits through reductions in overall federal spending, we must make sure that public broadcasting, as well as all other programs that continue to receive scarce federal resources, serves a truly worthwhile national goal.

We simply cannot afford to fund everything, and we certainly cannot fund programs that are merely desirable. Ultimately, public broadcasting will only continue to receive taxpayers' money if it more clearly focuses on our national priorities to educate children and adult illiterates, teach English to immigrants and others whose first language is foreign, such as many Hispanic-Americans, and otherwise help those on American's fringes enter the mainstream of American life.

It is incumbent on the public broadcasting community, and ultimately incumbent upon Congress, to ensure that these goals are being met by public broadcasting. Certainly it is clear that federal funds provide only partial support for public broadcasting, but as federal funding does provide a true infrastructure of programming support, equipment, services, and administrative resources, national needs must be served first.

Yet, during the oversight hearing conducted by the Committee in March, I heard a representative of public broadcasting suggest that a desire to achieve broad audience popularity prevents greater attention to the needs of minorities and those whose native tongue is not English.

A partial review of the debate over the reauthorization legislation illustrates the degree to which the debate over public broadcasting is off course.

The Committee has heard from the individual public stations, which strongly support the funding allocation changes contained in the bill being reported. They believe, and I share the belief, that

much is to be gained by enhancing the resources controlled by the local stations. After all, they are the licensees who are bound by law to meet the public interest.

Of course, the stations do have budgets to meet and may be too strongly tempted to program with their focus on pledge nights. But even if that misdirected vision does not come about, do they have adequate support to program for those who are truly overlooked by commercial broadcasters and who are most in need of the kind of information that television and radio can provide so powerfully?

The Committee has also heard from independent producers, many of whom live and work in my state of California. Important works have been and are created by independent producers, and public television should nurture the works of these video artists—to further the art form and bring to the public innovative programming. Similarly, public broadcasting should give special attention to women and minority group producers, for they bring a special perspective to the broadcast medium. Unfortunately, I have heard some suggest that it is enough to focus on the *fact* that a show is produced by an independent, a member of a minority group, or a woman. While the identity of the producer is an indicator of an inclusive public broadcasting system, it does not ensure that public broadcasting will achieve the maximum benefit for the public.

Specifically, while we have heard from many dedicated individuals and groups who produce and deliver public broadcasting's programming, we are left to our own best judgment to respond to the concerns of the most important constituency in the debate over public broadcasting: The public.

In this regard, I am not sure that simply making the funding changes proposed by the Committee will increase the likelihood that public broadcasting will better serve the public interest.

If we are to ensure that the public interest is served, we must not look at public broadcasting from the top down. Rather, we should first look to the needs of the viewer as he or she sits in front of the television or turns an ear to the radio. Then, we should focus on what is coming out of the picture tube or the radio's speaker and work our way back—to the station, then to the producer, then to PBS and NPR, and finally to CPB. I am not suggesting that we should control what is coming out. Nevertheless, we must always act having in mind what needs to come out to meet the promise of public broadcasting.

Let the form of the public broadcasting system follow the function to be served, not the other way.

As reported, the Committee bill will directly allocate more money to the stations themselves, an idea I support. But, there is no recognition of an absolutely critical fact about the poor and the disadvantaged, Native Americans, as well as ethnic minorities new to the U.S., and especially those for whom English is a foreign language: These people in need of special attention from public broadcasting are not distributed throughout our country as evenly as the money under this bill will be.

My State of California is a veritable melting pot of immigrants, especially from the Asian-Pacific and Latin America. For example, those of Hispanic descent constitute a significant proportion of my State's population, but this situation is not unique to California.

The Hispanic population is also significant in other States in the Southwest and in some major cities in other parts of the country. In each of these areas, many need help acclimating themselves to our language and culture in order to become a part of the mainstream of the United States. And, while those needing help do not live in every community throughout our Nation, no one can fairly suggest that the problem is not a national one.

Public television and radio can serve a vital role in bringing immigrants and others with English language difficulties into the American mainstream, but before this can happen, public broadcasting needs more than goodwill. It also needs a mandate appropriate to this mission.

It is therefore troubling that the Committee proposes to increase the distribution of funds directly to the public stations under what is essentially a formula grant program that uses a formula that does not take into account the extent of poor, minorities, and other underserved individuals in different communities. While increasing the flow of money to the stations is a good idea in the aggregate, the Committee's bill provides no mandate for focusing a disproportionate level of resources on those disproportionately in need, no matter where they live.

Certainly, we must expect that each station will strive to meet the needs of those unserved or underserved in its community. But, while a station in one mid-sized market may have relatively few disadvantaged people, a station in another market of similar size may be trying to serve a less affluent community that includes a larger proportion of disadvantaged people.

I am not convinced that CPB has met the challenge presented by these variations in audiences from one market to the next, but I see nothing in the proposal before us that suggests the new system will lead to a better result: I see no incentive for the better-off stations to allow significant sums to be spent out of the national programming fund for programs meeting the needs of the poor and others hoping to join the American mainstream.

Furthermore, with the money left to CPB, the needs of public broadcasting's primary audience, its reason for being—minorities, the uneducated, the poor, and our children—are, at best, put on a par with independent producers. Again, let me emphasize that creative, innovative, independent producers should receive special consideration, as we should seek to further the act form and seek new approaches to deal with such festering problems as illiteracy and malnutrition. Furthermore, others in the general public whose interests are not served by the commercial fare on the commercial networks should also be able to rely on public broadcasting. But, in my view the need to serve our children, minorities, the poor, and the uneducated is on a par with no other concern, no matter how worthwhile.

Specifically, the Committee bill would limit CPB in two ways. First, it would cut CPB's television program fund by 80 percent, thereby severely restricting CPB's capability to support narrowcasting directed at specific underserved groups in various communities throughout the United States. When this proposal is viewed in light of the absence of an incentive in the bill for the stations to

use their aggregated funds for narrowcasting, underserved groups may be doubly threatened by the Committee bill.

Second, the Committee bill would prohibit CPB from using its reduced level of program monies to fund any program for more than four years. This makes sense when considering the funding of an innovative, independently produced series. After all, if we are seeking to encourage diversity and innovativeness, then a 4-year time limit is appropriate if the show is directed at a general audience.

However, if a show is directed at the inner-city poor, or the concerns of Native Americans, or language problems faced by Hispanic-Americans or Vietnamese immigrants, and if it is successful, there should not be an artificial time limit on national funding solely because it could not garner a national audience.

For an illustration of the television audience in need of attention, one should consider a story that appeared in the June 26 edition of the *New York Times*. The story was about a dirt-poor family in West Virginia and noted that it was the 20th of the month, but the family had run out of money for food. And, while the refrigerator had in it little more than "a tray with a scrap of meat", the family had a very old but functional TV that, according to the article, served as a babysitter for the kids.

Hunger is a national problem, but it is most serious in certain pockets in the United States, such as in parts of West Virginia. While the first order of business is getting food to the hungry, that is not enough. As the article also pointed out, many people have an adequate caloric intake each day, but they are consuming too many starches and fats. Perhaps a program designed to provide economical food buying and nutritional information to people who receive food stamps could help, but who should pay the production costs? Are we to place the entire burden on the stations in the communities where there are many malnourished people—despite the fact that these are probably communities with the lowest per capita income?

It is appropriate to grant public stations a direct say in the administration of monies for shows that can truly achieve a national audience. However, for shows that need more funds than can reasonably be generated locally, but which meet genuine local needs that all of us in the Congress can recognize—such as nutrition or lack of English comprehension--we should ensure a continuing access to production funds.

The Committee bill, despite the great democratic principals underlying it, does not devote enough attention to the needs of the unserved and underserved audiences. More precisely, the Committee's proposed reallocation of funds for public broadcasting is deficient in three respects:

1. The bill should leave additional funds with CPB for its television program fund—perhaps 10 percent rather than the proposed 5 percent level. This increased level would allow CPB to devote greater attention and resources to the needs of ethnic and racial minorities, children, and the poor, while also providing funds for innovative shows of interest to those not satisfied by commercial television, especially by funding the works of independent producers.

2. CPB should be able to fund, at its own discretion, a show that is successfully meeting the needs of ethnic and racial minorities, children, and the poor without an arbitrary time limit.

3. Finally, both CPB and the stations, through the television and radio national programming funds, should be more clearly responsible for meeting the needs of ethnic and racial minorities, children, and the poor. I do appreciate the Committee's acceptance of my suggestion to add language to the Communications Act focusing attention on the need to serve the interests of minorities and others who are underserved by commercial broadcasters. However, the language, by itself, is little more than precatory if the new funding mechanism provides a serious structural disincentive to meet these needs. Yet, this is what I fear has occurred. Therefore, in addition to the changes suggested above, both CPB and the stations' national program fund administrators should be explicitly required to annually compile an assessment of the needs of ethnic and racial minorities, children, and the poor and annually indicate how their funding decisions will meet these needs—and submit both to Congress.

While I believe that the Committee's bill constitutes a beneficial restructuring of the public broadcasting funding mechanism, it needs some fine tuning to ensure public broadcasting's ability to meet the needs of its diverse audience. It is my hope that this fine tuning will be accomplished during the remainder of the legislative process.

SATELLITE REPLACEMENT

There is no doubt that PBS needs a new satellite system. However, it is anything but clear what system it needs. Despite this lack of clarity, the Committee bill includes an authorization for $200 million for a turnkey system that requires no financial contribution by PBS.

In a letter to the Committee dated May 27, 1988, PBS submitted three different proposals for replacing its satellite system. They ranged in projected costs from $63 million to $268 million, including both the satellite transponders and related ground equipment. Summarized, the proposals are as listed below. (Each dollar amount includes the cost of related ground equipment; dollar amounts are in millions):

System	Cost estimate—	
	Low	High
4 C-band transponders	$63.35	$106.0
4 C-band and 2 Ku-band transponders	95.9	189.1
2 C-band and 4 Ku-band transponders	138.6	268.1

Despite the great variation in costs projections included in the PBS proposal submitted in late May, and despite the fact that a true system replacement would likely require less than $100 million, the Committee has decided to authorize enough money to fund the most elaborate system of the three proposals—$200 million.

Beyond the question of cost, there are more basic questions: First, why should PBS buy transponders rather than leasing them? Second, if it should buy transponders, why should Congress foot the whole bill rather than sharing the cost or granting bonding authority to PBS to finance the purchase? Third, why didn't PBS set up a sinking fund years ago to pay for the satellite replacement, and if Uncle Sam should step in now, what mechanism is PBS proposing to pay for the next satellite system that will be needed ten years after this system is launched? Finally, what justification is there for the number of transponders requested?

On this last area of concern, it should be recognized that PBS currently owns four transponders (which it purchased without direct federal assistance), yet it only uses three on a full-time basis. The unused transponder is rented-out to generate additional income of $2,500,000 per year. In light of this underutilization, why should the federal government grant PBS $200 million for six satellite transponders, which would constitute an increase of 50 percent over the number presently owned and 100 percent over the capacity presently in use?

I strongly believe that it is inappropriate for the Committee to authorize funds for satellite system replacement when no specific system proposal has been presented to us. And even if some authorization is justified at this time, we should not set such a generous level that it provides no encouragement to PBS to buy anything less than a gold-plated system. While I have no reason to think that that is PBS' intent, the Committee's decision to set the authorization level at $200 million certainly provides a strong inducement to achieve this result.

At a minimum, PBS should be asked to provide the Committee with a single configuration proposal, including loading projections for the number of transponders requested, prior to our providing $200 million of general taxpayers' funds.

The Senate has vested in this Committee the responsibility to oversee public broadcasting and authorize its funding. Therefore, it is incumbent upon the Committee to have before it this information in order to meet the expectations of the Senate.

PETE WILSON.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

THE COMMUNICATIONS ACT OF 1934

Section 391 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 391. There are authorized to be appropriated $40,000,000 for each of the fiscal years 1979, 1980, and 1981, $20,000,000 for fiscal year 1982, $15,000,000 for fiscal year 1983, $12,000,000 for fiscal year 1984, $24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, [and] $32,000,000 for fiscal year 1988, *$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991,* to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

Section 396 of that Act

DECLARATION OF POLICY

SEC. 396. (a) The Congress hereby finds and declares that—

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

(2) through (5) * * *

(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;

[(6)] *(7)* it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States; and

[(7)] *(8)* a private corporation should be created to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.

(b) through (f) * * *

Purposes and Activities of Corporation

(g)(1) * * *

(2) In order to carry out the purposes set forth in subsection (a), the Corporation is authorized to—

(A) * * *

(B) contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use by public telecommunications entities, except that—

(i) * * *

(ii) nothing in this subparagraph shall be construed to prohibit the exercise by the Corporation of its prudent business judgment with respect to any [contract or] grant to assist in the production or acquisition of any program or series of programs recommended by any such panel;

* * * * * * *

Financing; Open Meetings and Financial Records

(k)(1)(A) * * *

(B) * * *

(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, [and 1990] *1990, 1991, 1992, and 1993*, an amount equal to 50 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $180,000,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, $220,000,000 for fiscal year 1983, $145,000,000 for fiscal year 1984, $153,000,000 for fiscal year 1985, $162,000,000 for fiscal year 1986, $200,000,000 for fiscal year 1987, $214,000,000 for fiscal year 1988, $238,000,000 for fiscal year 1989, [and] $254,000,00 for fiscal year 1990, *$304,000,000 for fiscal year 1991, $354,000,000 for fiscal year 1992, and $404,000,000 for fiscal year 1993.*

(D) * * *

(2) * * *

(3)(A)(i) The Corporation shall establish an annual budget for use in allocating amounts from the Fund. Of the amounts appropriated into the [Fund] *Fund, and interest thereon,* available for allocation for any fiscal year—

[(I) not more than 5 percent of such amounts shall be available for the administrative expenses of the Corporation;]

(I) not more than 104 percent of the moneys expended by the Corporation for the administrative expenses of the Corporation in the fiscal year during which the Public Telecommunications

Act of 1988 is enacted shall be available for the Corporation's administrative expenses in the fiscal year immediately thereafter, and for each succeeding fiscal year thereafter no more than 104 percent of the amount expended by the Corporation for its administrative expenses in the preceding fiscal year shall be available for the Corporation's administrative expenses, except that none of the amounts allocated under subclauses (II), (III), and (IV) shall be used for any administrative expenses of the Corporation;

[(II) not less than 5 percent of such amounts shall be available for other expenses incurred by the Corporation, including capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations (as provided in clause (iv)(I)) except that the total amount available for obligation for any fiscal year under this subclause and subclause (I) shall not exceed 10 percent of the amounts appropriated into the Fund available for allocation for such fiscal year;]

(II) up to 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and if the available funding level permits, for projects and activities that will enhance public broadcasting;

(III) 75 percent of the remainder (after allocations are made under subclause (I) and subclause (II)) shall be allocated in accordance with [clause (ii)(I)] *clause (ii)*; and

(IV) 25 percent of such remainder shall be allocated in accordance with clause (iii).

(ii) Of the amounts allocated under clause (i)(III) for any fiscal year—

(I) 75 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations pursuant to [paragraph (6)(B); and] *paragraph (6);*

(II) [25] *5* percent of such amounts shall be available for distribution under subparagraph (B)(i) for public television [programing.] *programming; and*

(III) 20 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.

[(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

[(I) not less than 50 percent of such amounts (as determined under paragraph (6)(A)) shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B); and

[(II) not more than 50 percent of such amounts (as determined under paragraph (6)(A)) shall be available for distribution under subparagraph (B)(i) for public radio.]

(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6);

(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.

(iv)(I) [Subject to the provisions of clause (v),] *From the amount provided pursuant to clause (i)(II),* the Corporation shall defray an amount equal to 50 percent of the total costs of interconnection facilities and operations to facilitate the availability of public television and radio programs among public broadcasts stations.

(II) * * *

[(v) If the expenses incurred by the Corporation under clause (i)(II) for any fiscal year for—

[(I) capital costs relating to telecommunications satellites;

[(II) the payment of programming royalties and other fees; and

[(III) the costs of interconnection facilities and operations (as provided in clause (iv));

exceed 6 percent of the amounts appropriated into the Fund available for allocation for such fiscal year, then 75 percent of such excess costs shall be defrayed by the licensees and permittees of public television stations from amounts available to such licensees and permittees under clause (ii)(I) and 25 percent of such excess costs shall be defrayed by the licensees and permittees of public radio stations from amounts available to such licensees and permittees under clause (iii)(I).]

[(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (a)(iii)(II), and a significant portion of such other funds as may be available to the Corporation, to make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, and for acquisition of such programs by public telecommunications entities. Of the funds utilized pursuant to this clause, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs.]

(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. None of the grants made pursuant to this clause shall be used in whole or in part to fund any program series that has been broadcast by public television or radio stations for 4 or more years. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers

and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.

(ii) * * *

[(C) In fiscal year 1981, the Corporation may expend an amount equal to not more than 5 percent of the funds made available by the Secretary of the Treasury during such fiscal year pursuant to paragraph (2)(A) for those activities authorized under subsection (g)(2) which are not among those grant activities described in subparagraph (B).

[(D) In fiscal years 1982 and 1983, the amount which the Corporation may expend for activities authorized under subsection (g)(2) which are not among those grant activities described in subparagraph (B) shall be 105 percent of the amount derived for the preceding fiscal year.]

(4) through (5) * * *

(6) [(A) The Corporation, in consultation with pubic radio stations and with National Public Radio (or any successor organization), shall determine the percentage of funds allocated under subclause (I) and subclause (II) of paragraph (3)(A)(iii) for each fiscal year. The Corporation, in consultation with such organizations, also shall conduct an annual review of the criteria and conditions applicable to such allocations.]

[(B)] The Corporation shall make a basic grant from the portion reserved for television stations under paragraph (3)(A)(ii)(I) to each licensee and permittee of a public television station that is on the air. *The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.* The balance of the portion reserved for television stations and the total portion reserved for radio stations under paragraph (3)(A)(iii)(I) shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

[(i)] *(A)* provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

[(ii)] *(B)* maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

[(iii)] *(C)* assure that each eligible licensee and permittee of a public radio station receives a basic grant.

(7) The funds distributed pursuant to paragraph (3)(A)*(ii)(I) and (iii)(I)* may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming.

(8) through (9) * * *

(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite. Interconnection Fund (hereinafter in this subsection referred to as the Satellite Interconnection Fund), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the por-

tion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

Section 399 of that Act

EDITORIALIZING AND SUPPORT OF POLITICAL CANDIDATES PROHIBITED

SEC. 399. [No noncommercial educational broadcasting station which receives a grant from the Corporation under subpart C of this part may engage in editorializing.] No noncommercial educational broadcasting station may support or oppose any candidate for political office.

Section 705 of that Act

UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 705. (a) * * *

(b) * * *

(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

[(c)] *(d)* For purposes of this section—

(1) through (5) * * *

[(d)] *(e)(1)* Any person who willfully violates subsection (a) shall be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

(2) through (6) * * *

[e] *(f)* Nothing in this section shall affect any right, obligation, or liability under title 17, United States Code, any rule, regulation, or order thereunder, or any other applicable Federal, State, or local law.

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